(18)

Supreme Court, U.S.
FILED
OCT 17 1996
CLERK

No. 95-1441

In the Supreme Court of the United States

OCTOBER TERM, 1996

LINDA J. BLESSING, DIRECTOR, ARIZONA DEPARTMENT OF ECONOMIC SECURITY, PETITIONER

v.

CATHY FREESTONE, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENTS

WALTER DELLINGER
Acting Solicitor General

FRANK W. HUNGER
Assistant Attorney General

EDWIN S. KNEEDLER
Deputy Solicitor General

PATRICIA A. MILLETT
Assistant to the Solicitor General

WILLIAM KANTER
ALFRED MOLLIN
Attorneys
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

191 pp

QUESTION PRESENTED

Whether an individual has a private right of action under 42 U.S.C. 1983 to seek redress against state officers responsible for administering a State's child support enforcement program under Title IV-D of the Social Security Act, 42 U.S.C. 651 *et seq.*, for violations of the Act and its implementing regulations.

TABLE OF CONTENTS

	Page
Interest of the United States	1
Statement	2
Summary of argument	9
Argument:	
Title IV-D creates individual rights that may be enforced in an action under 42 U.S.C. 1983	11
A. *Maine* v. *Thiboutot* should not be reconsidered	11
B. Private enforcement comports with principles of federalism and the Eleventh Amendment	14
C. Title IV-D creates judicially enforceable rights	16
1. Needy children and their custodial parents are Title IV-D's intended beneficiaries	17
2. Title IV-D's requirements are clear and mandatory	21
3. Some, but not all, of Title IV-D's child support enforcement provisions are judicially enforceable	26
D. Congress has not foreclosed actions under Section 1983	27
Conclusion	31

TABLE OF AUTHORITIES

Cases:

Albiston v. *Maine Comm'r of Human Servs.*, 7 F.3d 258 (1st Cir. 1993)	17, 20, 23, 28, 29
Arizona v. *Rumsey*, 467 U.S. 203 (1984)	12
Beasley v. *Harris*, 671 F. Supp. 911 (D. Conn. 1987)	17
Behunin v. *Jefferson County Dep't of Social Servs.*, 744 F. Supp. 255 (D. Colo. 1990)	17, 28
Bell v. *New Jersey*, 461 U.S. 773 (1983)	14, 24
Bennett v. *Kentucky Dep't of Educ.*, 470 U.S. 656 (1985)	20, 23

Cases—Continued: Page

Brown v. *Gardner*, 115 S. Ct. 552 (1994) 19
Carelli v. *Howser*, 923 F.2d 1208 (6th Cir. 1991) 17, 28
Davis v. *McClaran*, 909 S.W.2d 412 (Tenn. 1995), cert. denied, 116 S. Ct. 1370 (1996) 17, 28
Dennis v. *Higgins*, 498 U.S. 439 (1991) 22
Dunlop v. *Bachowski*, 421 U.S. 560 (1975) 27
Edelman v. *Jordan*, 415 U.S. 651 (1974) 15
Golden State Transit Corp. v. *City of Los Angeles*, 493 U.S. 103 (1989) 16, 17, 20, 21, 22, 24, 25, 27
Haskins v. *Stanton*, 794 F.2d 1273 (7th Cir. 1986) .. 30
Heckler v. *Chaney*, 470 U.S. 821 (1985) 27
Howe v. *Ellenbecker*, 8 F.3d 1258 (8th Cir. 1993), cert. denied, 114 S. Ct. 1373 (1994) 17, 28
John Hancock Mut. Life Ins. Co. v. *Harris Trust & Sav. Bank*, 510 U.S. 86 (1993) 19
King v. *Bradley*, 829 F. Supp. 989 (N.D. Ill. 1993) 17, 28
Linda R.S. v. *Richard D.*, 410 U.S. 614 (1973) 18
Livadas v. *Bradshaw*, 114 S. Ct. 2068 (1994) 12, 25, 26
Maine v. *Thiboutot*, 448 U.S. 1 (1980) 9, 11, 12
Mason v. *Bradley*, 789 F. Supp. 273 (N.D. Ill. 1992) 17
Middlesex County Sewerage Auth. v. *National Sea Clammers Ass'n*, 453 U.S. 1 (1981) 27, 28
Neal v. *United States*, 116 S. Ct. 763 (1996) 12
Oliphant v. *Bradley*, No. 91 C 3055, 1992 WL 153637 (N.D. Ill. Feb. 20, 1992) 17, 28
Patsy v. *Board of Regents*, 457 U.S. 496 (1982) 28
Patterson v. *McLean Credit Union*, 491 U.S. 164 (1989) 12
Pennhurst State Sch. & Hosp. v. *Halderman*, 451 U.S. 1 (1981) 16, 23, 24
School Bd. of Nassau County v. *Arline*, 480 U.S. 273 (1987) 22
Seminole Tribe of Florida v. *Florida*, 116 S. Ct. 1114 (1996) 15, 16
Smith v. *Robinson*, 468 U.S. 992 (1984) 18, 27, 28
Suter v. *Artist M.*, 503 U.S. 347 (1992) .. 13, 14, 22, 23, 27
United States v. *International Business Machines Corp.*, 116 S. Ct. 1793 (1996) 12
Wehunt v. *Ledbetter*, 875 F.2d 1558 (11th Cir. 1989), cert. denied, 494 U.S. 1027 (1990) 17, 28

Cases—Continued: Page

Wilder v. *Virginia Hosp. Ass'n*, 496 U.S. 498 (1990) 13, 16, 21, 22, 23, 25, 26, 27, 28
Will v. *Michigan Dep't of State Police*, 491 U.S. 58 (1989) 15
Williamson County Regional Planning Comm'n v. *Hamilton Bank of Johnson City*, 473 U.S. 172 (1985) 29
Withrow v. *Concannon*, 942 F.2d 1385 (9th Cir. 1991) 20, 30
Wright v. *City of Roanoke Redevelopment & Housing Auth.*, 479 U.S. 418 (1987) 27, 28
Young, Ex parte, 209 U.S. 123 (1908) 10, 15, 16

Constitution, statutes, regulations and rules:

U.S. Const. Amend. XI 10, 14, 15
Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500:
§ 301, 94 Stat. 527 4
§ 307, 94 Stat. 531 4
Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat. 1305:
preamble, 98 Stat. 1305 5
§ 23(a)(2), 98 Stat. 1329 ..... 4, 22
§ 23(a)(3), 98 Stat. 1329 5
§ 23(a)(5), 98 Stat. 1329 ..... 4, 22
§ 23(b)(1), 98 Stat. 1330 22
Federal Question Jurisdictional Amendments Act of 1980, Pub. L. No. 96-486, 94 Stat. 2369 13
Food Stamp Act Amendments of 1982, Pub. L. No. 97-253, Tit. I, Subtit. E, § 169, 96 Stat. 779 4
Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, § 2335, 95 Stat. 863-864 4
Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, § 504(a)(7), 110 Stat. 1321-53 30
Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (to be codified in part at 42 U.S.C. 601 *et seq.*, 651 *et seq.*) 7
§ 103(a)(1):
110 Stat. 2113 (42 U.S.C. 601(b)) 7, 19

Statutes, regulations and rules—Continued: Page

110 Stat. 2114 (42 U.S.C. 602(a)(2)) 7
110 Stat. 2137 (42 U.S.C. 608(a)(7)) 7
110 Stat. 2145 (42 U.S.C. 609(a)(8)) 7, 20
§ 302(a), 110 Stat. 2200 (42 U.S.C. 657(a)(2)) 8, 26
§ 304(a), 110 Stat. 2205 (42 U.S.C. 654(12)) .. 8, 18
§ 311, 110 Stat. 2205 (42 U.S.C. 654a(e)) 8
§ 312(a), 110 Stat. 2207 (42 U.S.C. 654(27)) .. 8
§ 312(b), 110 Stat. 2208:
42 U.S.C. 654b(b)(4) 8, 18
42 U.S.C. 654b(c)(1) 8
§ 313(a), 110 Stat. 2209 (42 U.S.C. 654(28)) .. 8
§ 313(b):
110 Stat. 2210 (42 U.S.C. 653a(b)) 22
110 Stat. 2211 (42 U.S.C. 653a(e)) 22
110 Stat. 2211 (42 U.S.C. 653a(g)(1)) 8
110 Stat. 2211-2212 (42 U.S.C. 653a(g)) .. 22
§ 314:
110 Stat. 2212-2213 (42 U.S.C. 666(a)(1)) 8
110 Stat. 2213-2214 (42 U.S.C. 666(b)) 8
§ 323, 110 Stat. 2222 (42 U.S.C. 666(a)(14)) .. 8
§ 325(a), 110 Stat. 2224:
42 U.S.C. 666(a)(2) 8
42 U.S.C. 666(c) 8
§ 331(a), 110 Stat. 2227-2230 (42 U.S.C. 666(a)(5)) 8
§ 341(a), 110 Stat. 2231 (42 U.S.C. 658 note) 8
§ 342(a)(3), 110 Stat. 2233 (42 U.S.C. 654(15)) 9
§ 342(b), 110 Stat. 2233-2234:
42 U.S.C. 652(a)(4) 8
42 U.S.C. 652(a)(4)(C) 9
§ 351:
110 Stat. 2239 (42 U.S.C. 666(a)(10)) 22
110 Stat. 2239 (42 U.S.C. 666(a)(10)(A)) 8

Statutes, regulations and rules—Continued: Page

110 Stat. 2240 (42 U.S.C. 666(a)(10)(C)) 8
§ 368, 110 Stat. 2251 (42 U.S.C. 666(c)(4)(A)) 8
§ 369, 110 Stat. 2251 (42 U.S.C. 666(a)(16)) .. 8
§ 395(d)(1)(D), 110 Stat. 2259 (42 U.S.C. 654(13)) 22
§ 904, 110 Stat. 2349 21
Social Security Act, 42 U.S.C. 301 *et seq.*:
Title IV-A, 42 U.S.C. 601 *et seq.*:
42 U.S.C. 602(a)(8)(A)(vi) 26
42 U.S.C. 602(a)(26) 3
42 U.S.C. 602(a)(26)(A) 3
42 U.S.C. 602(a)(27) 5, 20
42 U.S.C. 603(h) 23
42 U.S.C. 603(h)(1) 5, 6
42 U.S.C. 603(h)(2)(A) 6
42 U.S.C. 603(h)(2)(B) 6
42 U.S.C. 603(h)(3) 5, 23
Title IV-D, 42 U.S.C. 651 *et seq.* 1, 2
42 U.S.C. 651 17
42 U.S.C. 652(a)(1) 3
42 U.S.C. 652(a)(2) 3
42 U.S.C. 652(a)(3) 3
42 U.S.C. 652(a)(4) 3, 5, 23
42 U.S.C. 652(a)(9) 3
42 U.S.C. 652(f) 22
42 U.S.C. 652(g) 6, 7, 20, 23
42 U.S.C. 652(h) 7, 21, 22
42 U.S.C. 652(i) 7, 21, 22
42 U.S.C. 653 3
42 U.S.C. 654 ..... 21, 22, 23
42 U.S.C. 654(3) 22
42 U.S.C. 654(4) 3, 18
42 U.S.C. 654(5) 6, 18
42 U.S.C. 654(6) 3, 17, 18
42 U.S.C. 654(8) 3
42 U.S.C. 654(9) 22
42 U.S.C. 654(14) 22

Statutes, regulations and rules—Continued: Page

42 U.S.C. 654(20) 5, 21
42 U.S.C. 654(21)(A) 21
42 U.S.C. 654(24) 6
42 U.S.C. 655(a)(1) 23
42 U.S.C. 655(a)(1)(B) 5
42 U.S.C. 655(a)(1)(C) 7
42 U.S.C. 655(a)(2) 5
42 U.S.C. 655(e) 5
42 U.S.C. 656(a)(1) 3
42 U.S.C. 657 ..... 18, 21, 22, 23, 26
42 U.S.C. 657(a)(4)(B) 3
42 U.S.C. 657(a) 3
42 U.S.C. 657(b) 3
42 U.S.C. 657(b)(1) 26
42 U.S.C. 658 3
42 U.S.C. 658(d) 5
42 U.S.C. 664 4
42 U.S.C. 666 ..... 21, 22, 23
42 U.S.C. 666(a) 27
42 U.S.C. 666(a)(1) 26
42 U.S.C. 666(a)(1)-(8) 5
42 U.S.C. 666(a)(3) 26
42 U.S.C. 666(a)(4) 26
42 U.S.C. 666(a)(5)(B) 7
42 U.S.C. 666(a)(5)(C) 7
42 U.S.C. 666(a)(6) 26
42 U.S.C. 666(a)(7) 26
42 U.S.C. 666(a)(8) 6
42 U.S.C. 666(a)(10) 6
42 U.S.C. 666(b) 5, 26
42 U.S.C. 666(b)(3) 6
42 U.S.C. 667 ..... 5, 21, 22, 23
42 U.S.C. 667(b) 6
42 U.S.C. 668 21
Title XI, 42 U.S.C. 1301 *et seq.*:
42 U.S.C. 1320a-2 ..... 13, 23, 25
42 U.S.C. 1320a-10 ..... 13, 23, 25
Social Security Amendments of 1950, ch. 809, § 321(b), 64 Stat. 550 2

Statutes, regulations and rules—Continued: Page

Social Security Amendments of 1967, Pub. L. No. 90-248, 81 Stat. 821:
§ 201(a)(1), 81 Stat. 877-879 2
§ 211(a), 81 Stat. 896-897 2
Social Security Disability Amendments of 1980, Pub. L. No. 96-265, 94 Stat. 441:
§§ 402-405, 94 Stat. 462-465 4
§ 408, 94 Stat. 468-469 4
Social Services Amendments of 1974, Pub. L. No. 93-647, 88 Stat. 2337:
§ 101, 88 Stat. 2337-2361 2
§ 101(a), 88 Stat. 2355-2356 3
§ 101(c)(5)(C), 88 Stat. 2360 2
§ 101(c)(6)(A), 88 Stat. 2360 4
Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, §§ 171-176, 96 Stat. 401-404 4
Unemployment Compensation Amendments of 1976, Pub. L. No. 94-566, § 508, 90 Stat. 2689 4
26 U.S.C. 6402 4
28 U.S.C. 1331 13
42 U.S.C. 1983 ..... *passim*
42 U.S.C. 1997e 30
Ariz. Rev. Stat. Ann:
§§ 12-820 to 12-826 (1992 & Supp. 1994) 28
§ 12-820.01(A)(2) (1992) 28
45 C.F.R.:
Pt. 74:
Section 74.22(h)(1) 6
Section 74.61 6
Section 74.62 6
App. J 6
Pt. 232:
Section 232.12(b)(4) 3
Pt. 301 23
Section 301.13 6
Pt. 302 ..... 21, 22
Section 302.33 17
Section 302.33(e) 3

Regulations and rules—Continued:	Page
Pt. 303	7, 21, 22
Section 303.6(c)(4)	27
Section 303.100	26
Pt. 305:	
Section 305.20	6
Fed. R. Civ. P. 23	30
Sup. Ct. R. 14.1(a)	11
Miscellaneous:	
Child Support and the Work Bonus: Hearing Before the Senate Comm. on Finance, 93d Cong., 1st Sess. (1973)	24
121 Cong. Rec. 26,541 (1975)	18
129 Cong. Rec. 33,037 (1983)	30
130 Cong. Rec. 9843 (1984)	19
140 Cong. Rec. S15,024 (daily ed. Oct. 8, 1994)	13
142 Cong. Rec. H7759 (daily ed. July 17, 1996)	14
49 Fed. Reg. 36,773 (1984)	24
50 Fed. Reg. 19,623 (1985)	24
54 Fed. Reg. 15,877-15,878 (1989)	7
59 Fed. Reg. 66,212 (1994)	23
HHS, *Child Support Enforcement: FY 1995 Preliminary Data Report* (May 1996)	29
HHS, *Child Support Enforcement: Nineteenth Annual Report to Congress* (1994)	1-2, 14, 19, 29
H.R. 4, 104th Cong., 1st Sess. (1995)	7, 19
H.R. Conf. Rep. No. 761, 103d Cong., 2d Sess. (1994)	13
H.R. Rep. No. 527, 98th Cong., 1st Sess. (1983)	4, 19
H.R. Rep. No. 111, 103d Cong., 1st Sess. (1993)	7
H.R. Rep. No. 651, 104th Cong., 2d Sess. (1996)	15, 20
S. Rep. No. 1356, 93d Cong., 2d Sess. (1974)	2, 3, 18, 19, 23
S. Rep. No. 827, 96th Cong., 2d Sess. (1980)	13
S. Rep. No. 387, 98th Cong., 2d Sess. (1984)	4, 5, 6, 14, 19
S. Rep. No. 377, 100th Cong., 2d Sess. (1988)	6
Staff of House Comm. on Ways and Means, 103d Cong., 2d Sess., *Overview of Entitlement Programs: 1994 Green Book* (Comm. Print 1994) (WMCP: 103-27)	14

In the Supreme Court of the United States

OCTOBER TERM, 1996

No. 95-1441

LINDA J. BLESSING, DIRECTOR, ARIZONA DEPARTMENT OF ECONOMIC SECURITY, PETITIONER

v.

CATHY FREESTONE, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENTS

INTEREST OF THE UNITED STATES

Through Title IV-D of the Social Security Act, 42 U.S.C. 651 *et seq.*, Congress has made the needs of children and families for vigorous and effective child support enforcement a national priority. Title IV-D, which is administered by the Secretary of Health and Human Services, is one of the largest cooperative federal-state programs. More than 19 million people received child support services under Title IV-D in FY 1995, and the United States paid the States in excess of $2.0 billion for those services. The Title IV-D program has located millions of absent parents and helped hundreds of thousands of children identify their fathers. The nearly $40 billion in child support collected since 1990 alone has resulted in hundreds of thousands of families avoiding or leaving the welfare rolls, thereby reducing the human and financial toll of welfare dependence. See generally HHS, *Child Support Enforcement: Nineteenth Annual Report to Con-*

gress 2, 29-45 (1994). The United States has a strong interest in ensuring that the duties States voluntarily assume under Title IV-D are enforced in a manner that protects the rights of needy children and their parents, and at the same time avoids interference with federal oversight or with those areas of Title IV-D administration that Congress left to state discretion.

STATEMENT

1. Congress first required States to undertake child support enforcement efforts as a condition of receiving federal funds in 1950, under the Aid to Families with Dependent Children (AFDC) program. Ch. 809, § 321 (b), 64 Stat. 550. In 1968, Congress required States participating in AFDC to create an organizational unit for establishing paternity and collecting child support; enter into cooperative agreements with local officials to accomplish those goals and identify missing parents; and cooperate with other States in locating parents and enforcing support orders. Pub. L. No. 90-248, §§ 201(a)(1), 211(a), 81 Stat. 877-879, 896-897.

2. Congress's frustration with the lack of progress in child support enforcement culminated in the passage, in 1975, of Title IV-D of the Social Security Act, 42 U.S.C. 651 *et seq.* Pub. L. No. 93-647, § 101, 88 Stat. 2337-2361 (1975 Act); see also S. Rep. No. 1356, 93d Cong., 2d Sess. 42-44 (1974). Congress concluded that "children have the right to receive support from their fathers," and that Title IV-D would "help children attain this right, including the right to have their fathers identified so that support can be obtained." S. Rep. No. 1356, *supra*, at 42. The 1975 Act envisioned "a far more active role on the part of the Federal Government" in monitoring state programs and directly assisting the States' enforcement of children's rights. *Id.* at 2.

The 1975 Act required States participating in AFDC to "have in effect a plan approved under [Title IV-D] and operate a child support program in conformity with such plan." § 101(c)(5)(C), 88 Stat. 2360. Each State must provide services to locate noncustodial parents and establish the paternity of and secure support for children receiving AFDC benefits. 42 U.S.C. 654(4) and (8).[1] AFDC recipients must assign their support rights to the State and cooperate in enforcement efforts. 42 U.S.C. 602(a)(26).[2] Amounts recovered generally are retained by the State to reimburse it and the federal government for AFDC assistance provided to the family. 42 U.S.C. 657(a)-(b). Congress required States to provide services to non-AFDC families as well, 42 U.S.C. 654(6), although those families are not required to assign their support rights, 45 C.F.R. 302.33(e), and any child support the State collects must be paid to the family, 42 U.S.C. 657(a)(4)(B).

Congress agreed to pay 75% of the States' administrative costs under Title IV-D. 1975 Act, § 101(a), 88 Stat. 2355-2356. Congress also provided incentive payments for successful collection efforts. 42 U.S.C. 658. The 1975 Act directed the Secretary to establish standards for state programs in locating absent parents, establishing paternity, and obtaining child support "as [s]he determines to be necessary to assure that such programs will be effective," and to set organizational and staffing requirements for state child support offices. 42 U.S.C. 652(a)(1)-(2); see S. Rep. No. 1356, *supra*, at 46-47. The 1975 Act also established a federal Parent Locator Service utilizing federal and state records. 42 U.S.C. 652(a)(9), 653. The Secretary was charged with annually approving and auditing state programs. 42 U.S.C. 652(a)(3)-(4). If a State's program was found to be deficient, its federal Title IV-A (primarily AFDC) allotment was to be re-

[1] Unless otherwise indicated, references to the United States Code are to the 1994 edition, which predates the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, discussed *infra*.

[2] Once assigned, the support obligation is owed to the State and is collectible under all applicable state processes. 42 U.S.C. 656(a)(1). The custodial parent retains the right to enforce the obligation, although any payments obtained must be turned over to the State to the extent of AFDC payments received. 42 U.S.C. 602(a)(26)(A); 45 C.F.R. 232.12(b)(4).

duced by 5%. 1975 Act, § 101(c)(6)(A), 88 Stat. 2360.[3]

3. By the mid-1980s, more than $10.8 billion in child support had been collected under Title IV-D, annual collections had nearly quadrupled, and state and local revenues had grown by more than $300 million. S. Rep. No. 387, 98th Cong., 2d Sess. 11 (1984). Nevertheless, Congress found that there remained "a critical lack of child support enforcement," which had "a critical impact on the health and welfare of the children of the Nation." Pub. L. No. 98-378, § 23(a)(2), (5), 98 Stat. 1329. Congress was concerned that, by measuring their success "solely in terms of welfare savings," many States were disinclined to assist non-AFDC families. H.R. Rep. No. 527, 98th Cong., 1st Sess. 29 (1983). Congress amended Title IV-D in 1984 to ensure, "through mandatory income withholding, incentive payments to States, and other improvements in the child support enforcement program, that all children in the United States who are in need of assistance in securing financial support from their parents will receive such assistance regardless of their circumstances."

[3] In 1976, Congress required state employment agencies to provide the addresses of absent parents to the State's child support agency. Pub. L. No. 94-566, § 508, 90 Stat. 2689. In 1980, Congress (i) funded 90% of state costs of developing automated information systems; (ii) expanded incentive payments to the States; (iii) funded enforcement activities of certain state court personnel; (iv) gave States access to wage information held by the federal government and state employment offices; and (v) expanded the authority of the Internal Revenue Service (IRS) to collect child support arrearages. Pub. L. No. 96-265, §§ 402-405, 408, 94 Stat. 462-465, 468-469; Pub. L. No. 96-272, §§ 301, 307, 94 Stat. 527, 531. In 1981, Congress authorized the IRS to withhold tax refunds of persons delinquent in their child support obligations, 42 U.S.C. 664; 26 U.S.C. 6402, and directed States to withhold a portion of unemployment benefits from such parents. Pub. L. No. 97-35, § 2335, 95 Stat. 863-864. Amendments in 1982 reduced federal funding to 70%, permitted collections from military personnel, and provided for disclosure of information obtained under the food stamp program. Pub. L. No. 97-248, §§ 171-176, 96 Stat. 401-404; Pub. L. No. 97-253, § 169, 96 Stat. 779.

Pub. L. No. 98-378, preamble, 98 Stat. 1305; see also *id.* § 23(a)(3), 98 Stat. 1329.

The 1984 amendments required States to adopt laws and procedures providing for (i) mandatory wage withholding; (ii) expedited processes for obtaining and enforcing support orders; (iii) state income tax refund intercepts; (iv) property liens for overdue support; (v) establishment of paternity any time prior to a child's eighteenth birthday; (vi) posting of bonds to secure payment of overdue support; (vii) reporting overdue support to consumer credit agencies; and (viii) withholding overdue support from wages without further judicial order. 42 U.S.C. 666(a)(1)-(8), (b); see S. Rep. No. 387, *supra*, at 26-30. States are required to have those laws "in effect" and to "implement the[ir] procedures," and to establish statewide guidelines for child support amounts. 42 U.S.C. 654(20), 667.[4]

At the same time, Congress reduced the frequency and inflexibility of the Secretary's administrative oversight.[5] With the exception of States under penalty, audits were made triennial, 42 U.S.C. 652(a)(4), and Title IV-A penalties were based on a State's failure to attain "substantial compliance," rather than "full compliance," with Title IV-D requirements, 42 U.S.C. 603(h)(1); see also 42 U.S.C. 602(a)(27). A State is in "substantial compliance" if "the Secretary determines that any noncompliance * * * is of a technical nature which does not adversely affect the performance of the child support enforcement program." 42 U.S.C. 603(h)(3).[6] Congress

[4] Because interstate cases present "one of the most difficult areas of child support enforcement," S. Rep. No. 387, *supra*, at 34, Congress provided grants for state programs that improve interstate enforcement. 42 U.S.C. 655(e); see also 42 U.S.C. 658(d) (incentive credits for both States in interstate collections).

[5] Congress also reduced federal funding to a final floor of 66%, which is the current level for most administrative costs. 42 U.S.C. 655(a)(2). Matching funds at the 90% level were retained for automating data processing systems. 42 U.S.C. 655(a)(1)(B).

[6] The Secretary has interpreted "substantial compliance" as: (A) full compliance with requirements that services be offered

replaced the flat 5% penalty with a system of graduated penalties, ranging from 1% to 5% of total IV-A funds, and allowed States to avoid penalties by timely submission and successful implementation of corrective plans. 42 U.S.C. 603(h)(1), (2)(A) and (B).[7] Those changes shifted the focus of federal oversight to overall programmatic performance. S. Rep. No. 387, *supra*, at 32. In so doing, Congress was "not abandoning the[] requirements of existing law but rather expect[ed] them to be more fully carried out." *Id.* at 33.

4. In 1988, Congress again amended Title IV-D to increase state duties and performance levels. S. Rep. No. 377, 100th Cong., 2d Sess. 8 (1988). States were required to implement "new and more stringent provisions for wage withholding" and periodically review and adjust individual support awards. *Id.* at 15; 42 U.S.C. 666(a)(8) and (10), (b)(3). Congress directed the States to adopt automated case tracking systems and continued 90% federal funding for them. 42 U.S.C. 654(24). States also were required to inform AFDC families monthly of collections on their behalf, 42 U.S.C. 654(5), and to adhere to state guidelines for setting child support awards, 42 U.S.C. 667(b). Congress directed the Secretary to adopt regulations setting specific time limits for States to accept and respond to requests for services, locate absent parents, establish paternity, initiate child support proceedings, and collect and distribute child support,

---

statewide and that certain recipients be notified monthly of the support collected, as well as with reporting, record-keeping, and accounting rules; (B) 90% compliance with case opening and case closure criteria; and (C) 75% compliance for most remaining program functions. 45 C.F.R. 305.20. Since 1988, "substantial compliance" has also required States to succeed in establishing paternity in a specified percentage of cases. 42 U.S.C. 652(g).

[7] A State's failure to submit a plan that conforms to Title IV-D's state plan requirements can also result in denial of federal funds under Title IV-D itself. See 45 C.F.R. 301.13; see also 45 C.F.R. 74.22(h)(1), 74.61, 74.62; 45 C.F.R. Pt. 74, App. J.

42 U.S.C. 652(h)-(i).[8] Finally, Congress set federal standards for establishing paternity that, if not met, would result in a reduction in AFDC funds. 42 U.S.C. 652(g).[9]

5. a. On August 22, 1996, the President approved the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996 Act). As relevant here, the 1996 Act transformed AFDC into a block-grant program. Recipients now face a five-year cap on benefits, and Title IV-A does not "entitle any individual or family to assistance under any State program funded under this part." *Id.* § 103(a)(1), 110 Stat. 2113, 2137 (to be codified at 42 U.S.C. 601(b), 608(a)(7)). Similar language regarding the Title IV-D program was proposed (see H.R. 4, 104th Cong., 1st Sess. § 302 (1995)), but not enacted. The requirement under Title IV-A that States operate their child support programs in "substantial compliance" with Title IV-D has been replaced; States now must certify that they "will operate a child support enforcement program under the State plan approved under part D." 1996 Act, § 103(a)(1), 110 Stat. 2114 (to be codified at 42 U.S.C. 602(a)(2)). But the 1996 Act retained the framework of graduated penalties under Title IV-A for failure to comply substantially with Title IV-D's requirements. *Id.* at 2145 (to be codified at 42 U.S.C. 609(a)(8)).

b. Although the 1996 Act transformed numerous welfare programs into block grants, Congress left Title IV-D intact and, indeed, increased state responsibilities under

---

[8] See 45 C.F.R. Pt. 303. The Secretary has consulted extensively with state child support enforcement officials in establishing these standards and timeframes. See 54 Fed. Reg. 15,877-15,878 (1989).

[9] See also 42 U.S.C. 666(a)(5)(B) (genetic testing made available in contested paternity cases); 42 U.S.C. 655(a)(1)(C) (90% federal funding for paternity tests). In 1993, Congress increased the percentage of children for whom the State must establish paternity annually. 42 U.S.C. 652(g). Congress also mandated that States establish simplified civil procedures, including hospital-based programs, for voluntary acknowledgment of paternity. 42 U.S.C. 666(a)(5)(C); see generally H.R. Rep. No. 111, 103d Cong., 1st Sess. 487-489 (1993).

the program. The 1996 Act amended the rules governing distribution of collections to give priority to families who have left the welfare rolls. § 302(a), 110 Stat. 2200 (to be codified at 42 U.S.C. 657(a)(2)). Each State must establish a directory of new hires, a central registry of support orders, and centralized collection and disbursement units. *Id.* §§ 311, 312(a), 313(a), 110 Stat. 2205, 2207, 2209 (to be codified at 42 U.S.C. 654(27) and (28), 654a(e)). Congress set strict time limits for States to distribute support collections, notify employers to withhold child support, and take administrative enforcement action in interstate cases. *Id.* §§ 312(b), 313(b), 323, 110 Stat. 2208, 2211, 2222 (to be codified at 42 U.S.C. 653a(g)(1), 654b(c)(1), 666(a)(14)).

The 1996 Act directed States to adopt more streamlined processes for establishing paternity and to employ more rigorous child support enforcement techniques, such as automatic liens and suspension of driver's and professional licenses. §§ 314, 331(a), 368, 369, 110 Stat. 2212-2214, 2227-2230, 2251 (to be codified at 42 U.S.C. 666(a)(1), (4)(A), (5) and (16), (b)). In addition, States must adopt expedited procedures for (i) genetic testing; (ii) access to financial information and government records; (iii) mandatory income withholding; (iv) securing assets; and (v) increasing monthly payments in cases of arrearages. *Id.* § 325(a), 110 Stat. 2224 (to be codified at 42 U.S.C. 666(a)(2) and (c)). Support orders must be reviewed and updated upon request every three years, and States must give families notice of relevant proceedings and copies of orders, notice of right to seek review, and, upon request, information on the status of payments. *Id.* §§ 304(a), 312(b), 351, 110 Stat. 2205, 2208, 2239, 2240 (to be codified at 42 U.S.C. 654(12), 654b(b)(4), 666(a)(10)(A) and (C)).

c. The 1996 Act overhauled audit procedures and directed the Secretary to establish a new performance-based incentive and penalty program. §§ 341(a), 342(b), 110 Stat. 2231, 2233-2234 (to be codified at 42 U.S.C. 652(a)(4), 658 note). A State now must submit annual reports documenting that its program is "operated in compliance with" Title IV-D, and the State's review must employ standards and procedures set by the Secretary. *Id.* § 342(a)(3), 110 Stat. 2233 (to be codified at 42 U.S.C. 654(15)). The Secretary's triennial audit must assess the "completeness, reliability, and security of the data and the accuracy of the [State's] reporting systems"; "the adequacy of financial management"; and "whether collections and disbursements of support payments are carried out correctly," and it may pursue "such other purposes as the Secretary may find necessary." *Id.* § 342(b), 110 Stat. 2233-2234 (to be codified at 42 U.S.C. 652(a)(4)(C)).[10]

6. Arizona has elected to participate in the AFDC and Title IV-D programs and has submitted plans assuring that it will operate a child support enforcement program in accordance with Title IV-D's requirements. Based on those commitments, Arizona has received approximately $1.4 billion in AFDC funds and more than $222 million in Title IV-D funds from the federal government since 1976.

SUMMARY OF ARGUMENT

A. This Court should not reconsider *Maine* v. *Thiboutot*, 448 U.S. 1 (1980). Principles of *stare decisis* counsel strongly against overruling a 16-year-old precedent that this Court unanimously reaffirmed two Terms ago. In any event, Congress twice ratified *Thiboutot* and its progeny in 1994.

B. Petitioner's invocation of "principles of federalism" is misplaced. Title IV-D is a voluntary program through which Congress has given the States billions of dollars and developed a nationwide child support enforcement

[10] The Department of Health and Human Services is currently evaluating the impact of the 1996 Act on the Title IV-D program and assessing what regulatory changes are necessary or appropriate to interpret and implement its provisions. We have been informed by the Department that, in its judgment, the 1996 Act will require substantial revisions in performance incentives, standards and procedures for audits, and the definition of "substantial compliance" as the basis for penalties under Title IV-A.

infrastructure. The growing interstate character of the child support problem and the need for uniform enforcement call for a substantial federal role. The 1996 Act, moreover, demonstrates that Congress is responsive to federalism concerns in welfare administration. Under Title IV-D, however, Congress chose to strengthen the standards governing state programs. Enforcement of those standards in an action against state officials under 42 U.S.C. 1983 is fully consistent with *Ex parte Young*, 209 U.S. 123 (1908), and does not contravene the Eleventh Amendment.

C. Title IV-D's text, structure, and legislative history establish that it creates enforceable rights in the individuals who seek child support services from a State. Its primary purpose is to provide children with much-needed child support services, which give them an opportunity to establish familial relationships with both parents and avoid a childhood pervaded by economic hardship. In addition, a number of provisions of Title IV-D and its implementing regulations speak in specific and mandatory terms that are well within the competence of courts to enforce.

Petitioner argues that Title IV-D's "substantial compliance" floor for avoiding administrative penalties enables a State to ignore 25% of the children and families seeking its services. But Congress's employment of a flexible measure of programmatic performance to undergird the funding relationship between governments does not mean that Congress no longer expected full adherence to Title IV-D's requirements in a State's furnishing of child support services to particular beneficiaries. Petitioner's claim that Congress should have warned that a Section 1983 action would be available is also without merit, because Section 1983's text, reinforced by recent Acts of Congress and this Court's precedents, provided ample notice.

Not all of Title IV-D's provisions, however, are judicially enforceable to the same degree. Congress preserved state discretion in some areas, such as selecting appropriate collection tools and initiating judicial proceedings.

Whether a Section 1983 action is available thus will depend on which aspect of the State's program is at issue and the nature of the relief sought in a given case.

The Secretary's generalized audit procedures do not preclude Section 1983 remedies, especially where, as here, there is no alternative avenue through which individuals can enforce their rights. The availability of relief under Section 1983 in appropriate circumstances will complement the Secretary's oversight and promote Congress's goal of effective and uniform child support enforcement across the Nation.

ARGUMENT

TITLE IV-D CREATES INDIVIDUAL RIGHTS THAT MAY BE ENFORCED IN AN ACTION UNDER 42 U.S.C. 1983

A. *Maine* v. *Thiboutot* Should Not Be Reconsidered

Section 1983 creates a private cause of action against any person who, under color of state law, deprives another "of any rights, privileges, or immunities secured by the Constitution and laws" of the United States. 42 U.S.C. 1983. This Court held in *Maine* v. *Thiboutot*, 448 U.S. 1 (1980), that Section 1983 authorizes suits by private individuals against state actors who violate rights created by federal statutes, specifically including the Social Security Act. *Id.* at 4-8. Petitioner asks (Br. 32) this Court to "reconsider" *Thiboutot* and limit sharply the federal laws that may be enforced under Section 1983. There is no basis for doing so.[11]

Principles of *stare decisis* counsel strongly against unraveling more than a decade and a half of precedent. "[*S*]*tare decisis* promotes the evenhanded, predictable, and consistent development of legal principles, fosters re-

---

[11] Petitioner did not present this issue in her petition for certiorari. Sup. Ct. R. 14.1(a). The petition did not mention *Thiboutot*, let alone urge that it be reconsidered. The question presented suggested only that permitting an action under Section 1983 would "contravene this Court's precedents" (see Pet. i), not that seminal precedent in this area would have to be reconsidered for petitioner to prevail.

liance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *United States* v. *International Business Machines Corp.*, 116 S. Ct. 1793, 1801 (1996) (internal quotation marks omitted). Both the doctrine and its underlying purposes apply with "special force" to issues of statutory construction. *Patterson* v. *McLean Credit Union*, 491 U.S. 164, 172 (1989). This Court's "reluctance to overturn [statutory construction] precedents derives in part from institutional concerns about the relationship of the judiciary to Congress," for Congress is always free to correct the Court's interpretation of the laws it passes. *Neal* v. *United States*, 116 S. Ct. 763, 769 (1996).

Consequently, this Court will overrule precedent construing a federal statute only if (i) intervening law has undercut the "conceptual underpinnings" of the decision; (ii) "later law has rendered the decision irreconcilable with competing legal doctrines or policies"; or (iii) the Court is provided "compelling evidence bearing on Congress' original intent." *Neal*, 116 S. Ct. at 769. None of those "special justification[s]" is present here. *Arizona* v. *Rumsey*, 467 U.S. 203, 212 (1984). Quite the opposite is true.

Intervening law has repeatedly followed and reaffirmed *Thiboutot*. Just two Terms ago, this Court unanimously reconfirmed and applied *Thiboutot*'s holding in *Livadas* v. *Bradshaw*, 114 S. Ct. 2068, 2083 (1994). No Justice has suggested that *Thiboutot* should be reexamined, and *Thiboutot* has come to occupy an active and vital position in the law, as petitioner recognizes. See Pet. Br. App. C. Petitioner offers no new or compelling evidence of Congress's original intent to suggest that Section 1983 no longer "means what it says" (*Thiboutot*, 448 U.S. at 4).[12]

[12] Petitioner's suggestion (Br. 31) that *Thiboutot* is "in conflict" with precedent concerning implied rights of action ignores the difference between the two inquiries:

> [The implied cause of action inquiry] reflects a concern, grounded in separation of powers, that Congress rather than the courts controls the availability of remedies for violations of statutes. Because § 1983 provides an "alternative source of *express* congressional authorization of private suits," these separation-of-powers concerns are not present in a § 1983 case. *Wilder* v. *Virginia Hosp. Ass'n*, 496 U.S. 498, 508 n.9 (1990) (citations omitted). Indeed, it would be inconsistent with the separation of powers to require that courts themselves find an implied right of action before giving effect to an express cause of action enacted by Congress.

In any event, in 1994, Congress twice ratified *Thiboutot* and its progeny—in 42 U.S.C. 1320a-2, and then in 42 U.S.C. 1320a-10.[13] In the text of those provisions, Congress made clear that a cause of action is available to enforce provisions of the Social Security Act consistent with this Court's precedents predating *Suter* v. *Artist M.*, 503 U.S. 347 (1992), which of course include *Thiboutot*. See H.R. Conf. Rep. No. 761, 103d Cong., 2d Sess. 926 (1994) ("The intent of this provision is to assure that individuals who have been injured by a State's failure to comply with the Federal mandates of the State plan titles of the Social Security Act are able to seek redress in the federal courts to the extent they were able to prior to * * * *Suter* v. *Artist M.*"); 140 Cong. Rec. S15,024 (daily ed. Oct. 8, 1994) (Sen. Rockefeller).[14] This

[13] Section 1320a-2 (like Section 1320a-10) provides:

> In an action brought to enforce a provision of this chapter, such provision is not to be deemed unenforceable because of its inclusion in a section of this chapter requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in Suter v. Artist M., [503 U.S. 347] (1992), but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in Suter v. Artist M. that section 671(a)(15) of this title is not enforceable in a private right of action.

[14] Congress previously had amended 28 U.S.C. 1331 to remove the amount-in-controversy requirement, predicated on *Thiboutot*'s recognition of a Section 1983 action to enforce federal statutes. See Pub. L. No. 96-486, 94 Stat. 2369; S. Rep. No. 827, 96th Cong., 2d Sess. 5 & nn.8-9 (1980).

Court's pre-*Suter* precedents therefore must continue to govern the availability of suits under Section 1983 to enforce provisions of the Social Security Act.

B. Private Enforcement Comports With Principles Of Federalism And The Eleventh Amendment

1. Petitioner's invocation of "principle[s] of federalism" (Br. 24) to bar recognition of a Section 1983 action must be placed in context. Title IV-D is one of the most generous federal spending programs in existence, financing from 66% to 90% of the States' child support enforcement efforts. Indeed, most States profit from their Title IV-D programs.[15] This case, therefore, is primarily about how *federal* money is spent. "Requiring States to honor the obligations voluntarily assumed as a condition of federal funding * * * simply does not intrude on their sovereignty." *Bell* v. *New Jersey*, 461 U.S. 773, 790 (1983).

Child support enforcement, moreover, is not an area of purely local concern. Interstate cases present "one of the most difficult areas of child support enforcement." S. Rep. No. 387, *supra*, at 34. The mobility of absent parents makes cooperation among States and uniform national enforcement standards of critical importance. See, *e.g.*, *id.* at 27; 142 Cong. Rec. H7759 (daily ed. July 17, 1996) (Rep. Roukema) (noting "absolute requirement for interstate enforcement of child support, because the current, State-based system is only as good as its weakest link").[16]

---

[15] In 1994, States realized $484 million in savings, at a cost to the federal government of nearly $1 billion. See *Nineteenth Annual Report* 77-78; Staff of House Comm. on Ways and Means, 103d Cong., 2d Sess., *Overview of Entitlement Programs: 1994 Green Book* 494-499 (Comm. Print 1994) (WMCP:103-27).

[16] This case thus stands in sharp contrast to *Suter*, in which the Secretary, consistent with congressional intent, rejected national standards and opted to permit States substantial flexibility to tailor their efforts to the needs of each case. 503 U.S. at 360-363.

Finally, the administration of welfare programs is an area in which Congress itself has been responsive to the States' interests and deferred to state autonomy when it found that cause appropriate. The 1996 Act vividly demonstrates that the political process can address state concerns about excessive regulation, entitlements, unfunded mandates, and impediments to experimentation. Congress's decision in the same Act to carve Title IV-D out for *more* directive treatment reflects a deliberate determination that the problem of child support in this Nation can be combatted effectively only through a closely coordinated, comprehensive, and vigorously enforced federal-state program. See H.R. Rep. No. 651, 104th Cong., 2d Sess. 1331 (1996).

2. The Eleventh Amendment bars suits against States, not against state officers. Almost 90 years ago, this Court held that the Eleventh Amendment does not bar suits for injunctive relief against state officers. *Ex parte Young*, 209 U.S. 123, 155-157 (1908). That decision has been consistently reaffirmed. See, *e.g.*, *Seminole Tribe of Florida* v. *Florida*, 116 S. Ct. 1114, 1132 (1996); *Will* v. *Michigan Dep't of State Police*, 491 U.S. 58, 71 n.10 (1989); see also *Edelman* v. *Jordan*, 415 U.S. 651, 664-668 (1974) (*Ex parte Young* suit permitted to enforce provisions of Social Security Act). Respondents have not named the State of Arizona or one of its agencies as a defendant in this action. The suit is brought against a state official seeking only injunctive and declaratory relief. The suit thus falls squarely within the traditional boundaries of *Ex parte Young* and does not transgress the Eleventh Amendment.[17]

---

[17] Much of petitioner's argument stems from a concern that courts should not enforce Title IV-D's "substantial compliance" provision, because relief necessarily would operate against the State, not a state official. As we argue below (see p. 20, *infra*), however, the "substantial compliance" provision is not enforceable under Section 1983. On the other hand, a suit seeking compliance with a provision of Title IV-D that is enforceable by custodial

Petitioner's reliance (Br. 26-30) on *Seminole Tribe* is misplaced. The *Ex parte Young* aspect of that decision was based on statutory construction, not constitutional limitations. 116 S. Ct. at 1133 & n.17. Because "Congress ha[d] prescribed a detailed remedial scheme for the enforcement against a State of a statutorily created right," the Court concluded that Congress did not intend to permit an *Ex parte Young* suit. *Id.* at 1132. Here, by contrast, there is no "carefully crafted and intricate remedial scheme" that would be rendered "superfluous" (*id.* at 1132, 1133) by permitting private enforcement under Section 1983. Unlike the statute at issue in *Seminole Tribe*, Title IV-D contains no alternative avenue for judicial enforcement by non-federal parties in a suit directly against the State itself, and private suits against state officials under Section 1983 in appropriate circumstances would complement the Secretary's programmatic audit and enforcement powers.

C. Title IV-D Creates Judicially Enforceable Rights

Not every violation of a federal statute constitutes the deprivation of a "right * * * secured by federal law" within the meaning of Section 1983. *Golden State Transit Corp.* v. *City of Los Angeles*, 493 U.S. 103, 106 (1989). The statute in question must create judicially enforceable rights. *Ibid.*; see also *Wilder* v. *Virginia Hosp. Ass'n*, 496 U.S. 498, 509 (1990); *Pennhurst State Sch. & Hosp.* v. *Halderman*, 451 U.S. 1, 15-30 (1981). A federal statute creates an enforceable "right" if (i) Congress intended the provision in question to benefit the putative plaintiff; (ii) the provision is binding and mandatory on the States, rather than precatory; and (iii) the right is not beyond the competence of the judiciary to enforce. *Wilder*, 496 U.S. at 509; *Golden State*,

---

parents and children will necessitate nothing more than the typical *Ex parte Young* relief: an injunction directing agency officials to perform specific duties that are spelled out in the Act and regulations.

493 U.S. at 106. All three factors weigh in favor of finding enforceable rights under Title IV-D.[18]

1. Needy Children And Their Custodial Parents Are Title IV-D's Intended Beneficiaries

Title IV-D's plain language identifies children and custodial parents in need of support services as the intended beneficiaries. Congress enacted the program "[f]or the purpose of enforcing the support obligations owed by absent parents to their children and the spouse * * *, locating absent parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children." 42 U.S.C. 651. Title IV-D offers free (or highly subsidized) child support services to all persons in need of such assistance,[19] and individuals have a right to receive those services regardless of whether they

---

[18] Prior to the 1988 amendments, the Secretary took the position that there was no right of action under Section 1983 to enforce Title IV-D. The Secretary has reconsidered that position in light of the amendments in 1988 and later years. Most courts that have considered the question have held that Title IV-D creates enforceable rights. See *Howe* v. *Ellenbecker*, 8 F.3d 1258, 1262-1263 (8th Cir. 1993), cert. denied, 114 S. Ct. 1373 (1994); *Albiston* v. *Maine Comm'r of Human Servs.*, 7 F.3d 258, 264-268 (1st Cir. 1993); *Carelli* v. *Howser*, 923 F.2d 1208, 1210-1212 (6th Cir. 1991); *King* v. *Bradley*, 829 F. Supp. 989, 992-995 (N.D. Ill. 1993); *Behunin* v. *Jefferson County Dep't of Social Servs.*, 744 F. Supp. 255, 257-258 (D. Colo. 1990); *Beasley* v. *Harris*, 671 F. Supp. 911, 920-922 (D. Conn. 1987); *Davis* v. *McClaran*, 909 S.W.2d 412, 416-417, 419-420 (Tenn. 1995), cert. denied, 116 S. Ct. 1370 (1996); see also *Wehunt* v. *Ledbetter*, 875 F.2d 1558, 1568-1577 (11th Cir. 1989) (Clark, J., dissenting), cert. denied, 494 U.S. 1027 (1990). But see *Wehunt*, 875 F.2d at 1565-1566; *Mason* v. *Bradley*, 789 F. Supp. 273, 276-277 (N.D. Ill. 1992); *Oliphant* v. *Bradley*, No. 91 C 3055, 1992 WL 153637, at *5-*7 (N.D. Ill. Feb. 20, 1992).

[19] The application fee charged non-AFDC families is nominal and often paid by the State. 42 U.S.C. 654(6); 45 C.F.R. 302.33. According to its state plan, Arizona charges a $1 fee, which the State pays, and does not recoup collection costs from the family.

will ultimately prove beneficial.[20] Thus, the rights secured by Title IV-D are similar to a statutory right to educational or medical services, which individuals may receive even if they may not actually learn or enjoy better health as a result. See, *e.g.*, *Smith* v. *Robinson*, 468 U.S. 992, 1010 (1984). The right to child support services has recently taken on added importance because the 1996 Act's five-year cap on welfare benefits makes the opportunity for families to secure alternative income sources particularly valuable.[21]

The legislative history confirms that Title IV-D is "a bill of rights for children" and custodial parents. 121 Cong. Rec. 26,541 (1975) (Sen. Nunn). The 1975 Senate Report declared that "children have the right to receive support from their fathers"; that Title IV-D will "help children attain this right, including the right to have their fathers identified so that support can be obtained"; and that Title IV-D's vigorous implementation will "deter[] [parents] from deserting their families to welfare and children will be spared the effects of family breakup." S. Rep. No. 1356, *supra*, at 42. The 1984 amendments reaffirmed Congress's commitment to chil-

[20] Many of Title IV-D's provisions speak in terms of state obligations running to individuals. See, *e.g.*, 42 U.S.C. 654(4) ("State will" provide paternity services to "each child"), 654(5) (individual notification and right to request review of order), 654(6) (child support and paternity services available to any individual), 657 (outlining distribution of collections to families); 1996 Act, §§ 304(a), 312(b), 110 Stat. 2205, 2208 (to be codified at 42 U.S.C. 654(12), 654b(b)(4)) (right of "individuals" to notice of proceedings and information about support collected).

[21] Petitioner's reliance (Br. 16-17) on *Linda R.S.* v. *Richard D.*, 410 U.S. 614 (1973), is misplaced. Respondents do not seek to compel state officials to bring a criminal prosecution or civil action, and they do not rely on a non-statutory interest in child support services. Respondents instead seek to enforce a federal statutory right to services due from the State, even if those services may not, in turn, succeed in obtaining support payments. Cf. *id.* at 617 n.3 ("Congress may enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute.").

dren and their custodial parents. H.R. Rep. No. 527, *supra*, at 29 (Title IV-D is "aimed at serving children"); S. Rep. No. 387, *supra*, at 6. Finally, while the 1996 Act provides that some provisions of the Social Security Act do not create individual entitlements (1996 Act, § 103(a)(1), 110 Stat. 2113 (to be codified at 42 U.S.C. 601(b)), similar language with respect to Title IV-D was not enacted. See H.R. 4, *supra*. "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Brown* v. *Gardner*, 115 S. Ct. 552, 556 (1994); accord *John Hancock Mut. Life Ins. Co.* v. *Harris Trust & Sav. Bank*, 510 U.S. 86, 100 (1993) ("we are mindful that Congress had before it, but failed to pass, just such a scheme").

Petitioner is wrong in arguing (Br. 15, 20-21, 26) that Congress enacted Title IV-D primarily to benefit the public fisc by reducing welfare expenditures. Nothing in Title IV-D's stated purpose or text evinces such a narrow focus, and the requirement that States offer their services to non-AFDC beneficiaries (who now outnumber AFDC beneficiaries, *Nineteenth Annual Report* 118) refutes that contention. The 1984 amendments responded to congressional concern that States measured their success "solely in terms of welfare savings," since "[t]he objectives behind the program are greater than merely recouping federal and state AFDC expenditures." H.R. Rep. No. 527, *supra*, at 29-30. Congress intended Title IV-D to effectuate "the larger societal responsibility for making sure that all children receive financial support from both their parents to the fullest extent possible." *Id.* at 30; see also S. Rep. No. 1356, *supra*, at 42 (protection of children is "more important[]" than potential financial benefit to government); 130 Cong. Rec. 9843 (1984) (Sen. Dole). The 1996 Act reaffirms that Title IV-D's "fundamental goal * * * is to increase the finan-

cial security of children." H.R. Rep. No. 651, *supra*, at 1440.

Certain of Title IV-D's provisions, however, do not give rise to enforceable rights because they do not provide for specific child support services or confer individual benefits. See *Golden State*, 493 U.S. at 106 (plaintiff must show that "the provision in question" benefits her). In particular, the requirement that a State operate its child support program in "substantial compliance" with Title IV-D does not create a right running to individuals. Rather, "substantial compliance" establishes a floor below which a State program's performance warrants the assessment of financial penalties by the federal government. See, *e.g.*, *Albiston* v. *Maine Comm'r of Human Servs.*, 7 F.3d 258, 266 (1st Cir. 1993) (substantial compliance "is not * * * the measure of what the regulations require; it is intended to measure how great a failure to meet those requirements should cause funds to be cut off") (quoting *Withrow* v. *Concannon*, 942 F.2d 1385, 1387 (9th Cir. 1991)); cf. *Bennett* v. *Kentucky Dep't of Educ.*, 470 U.S. 656, 663-664 (1985). Indeed, the phrase appears in Title IV-A and IV-D only in penalty provisions. See 42 U.S.C. 652(g); 1996 Act, § 103 (a)(1), 110 Stat. 2145 (to be codified at 42 U.S.C. 609(a)(8)).[22] Because achieving "substantial compliance" on a program-wide basis is not a distinct child support service for any individual child or parent, the court of appeals erred in finding that standard enforceable under Section 1983. See Pet. App. 14a-15a, 18a.

---

[22] Prior to the 1996 Act, a reference to "substantial compliance" was included in the provision obligating States participating in AFDC to maintain a Title IV-D program. 42 U.S.C. 602(a)(27). The 1996 Act reconfirmed that "substantial compliance" is a penalty trigger by deleting the phrase from Section 602(a)(27) and confining it to the penalty provision. 1996 Act, § 103(a)(1), 110 Stat. 2145 (to be codified at 42 U.S.C. 609(a)(8)).

2. *Title IV-D's Requirements Are Clear And Mandatory*

a. Because the enforceable provisions of Title IV-D are concrete, mandatory, and binding, they provide States with ample notice of the services they must provide as a condition of receiving federal funds. See *Golden State*, 493 U.S. at 106. Title IV-D lists 33 specific requirements that state plans "must provide" for the State to receive Title IV-A and IV-D funds. 42 U.S.C. 654 (*e.g.*, paternity establishment, parent locator service, payment distribution order, collection of overdue child support, interception of federal income tax refunds; services "shall" be made available to non-Title IV-A families). Title IV-D also lists 22 laws that States "must have in effect" (42 U.S.C. 666), and provides that States "shall implement" the procedures under those laws (42 U.S.C. 654(20)); see also 42 U.S.C. 657 (directing how collections "shall be distributed"), 667 (States "must establish guidelines" for child support awards). Likewise, Title IV-D provides for the establishment of time limits within which States "must accept and respond to" requests for services and "must distribute" funds collected. 42 U.S.C. 652(h) and (i). Compare *Wilder*, 496 U.S. at 512 (requirement that state plan "must provide" for specified manner of payment is mandatory and binding).[23]

By contrast, when Congress wished only to encourage state action or to make certain Title IV-D program components and services optional, it spoke in non-binding, precatory terms. See 42 U.S.C. 654(21)(A) (imposition of fees is "at the option of the State"), 668 (States "encouraged" to adopt simplified civil process for paternity establishment in contested cases); 1996 Act, § 904, 110 Stat. 2349 ("sense of the Senate" that States should pursue efforts and adopt pilot programs to collect support

---

[23] The regulations speak in equally mandatory terms. See 45 C.F.R. Pts. 302 (listing what States "shall provide"), 303 (listing services States "must" provide and timeframes that "must" be met).

from unemployed parents or those who refuse to pay); Pub. L. No. 98-378, § 23(a)(2) and (5), (b)(1), 98 Stat. 1329-1330 ("sense of the Congress" that States should develop measures to enhance enforcement).

b. Title IV-D's requirements are not only mandatory, but are also spelled out in concrete and specific terms so that States know precisely what is expected of them. Cf. *Suter*, 503 U.S. at 359-360 (no enforceable right where neither federal statute nor regulations set forth contours of state duties). Title IV-D prescribes in extensive detail the precise components of plan requirements, how services must operate, timeframes for performance, the required content of state laws and administrative procedures, and a specific hierarchy for payment distributions. See 42 U.S.C. 654, 657, 666, 667; 1996 Act, §§ 313(b), 351, 110 Stat. 2210, 2211-2212, 2239 (to be codified at 42 U.S.C. 653a(b), (e) and (g), 666(a)(10)). The Secretary's regulations offer even more detailed direction, setting precise time limits for many administrative actions and mapping out specific administrative responses to a variety of child support service requests and problems. 45 C.F.R. Pts. 302, 303.[24]

Unlike the statutory provision in *Suter*, then, Title IV-D demands far more of States than the mere submission of a plan that duly recites the obligatory components listed in the Act. Cf. *Suter*, 503 U.S. at 358; see also 42 U.S.C. 1320a-2 and 1320a-10 (directing application of pre-*Suter* precedent). Title IV-D specifies what state child support services and laws shall be "in effect." 42 U.S.C. 654, 657, 666, 667. Indeed, in enacting Title IV-D in 1975, Congress expressed frustration that previous legislation had entailed little more than a "perfunctory review [by the Secretary] of the State plan material submitted by the State to see that it contains the statement that there will be a child support program which complies with the law." S. Rep. No. 1356, *supra*, at 47. Congress made clear that such "paper compliance would no longer suffice." *Ibid.*[25]

Nor can petitioner fairly claim that Title IV-D requires only "substantial compliance" with its terms. As noted above (see p. 20, *supra*), "substantial compliance" governs the assessment of penalties against States, and the definition of "substantial compliance" alerts States that it does not express the full measure of their obligations under the program. 42 U.S.C. 603(h)(3) (contrasting "substantial compliance" with a State's "full compliance with the requirements of this part," and characterizing any failure to be in full compliance as "noncompliance"); see also *Bennett*, 470 U.S. at 663 ("substantial compliance" provision in education program is prospective penalty that does not limit duty to comply with statutory conditions); *Albiston*, 7 F.3d at 266 ("the 'substantial' compliance required to avoid administrative penalties * * * is independent of, and narrower than, the State's direct obligation to AFDC recipients") (citing *Wilder*, 496 U.S. at 514-515 & n.11).[26]

---

[24] Petitioner cannot claim a lack of notice that she would have to comply with the Secretary's regulations. The statutory text notifies her that she will be bound by regulations (*e.g.*, 42 U.S.C. 652(f), (h) and (i), 654(3), (9) and (14)), and the State's plan must "provide that the State will comply with such other requirements and standards as the Secretary determines to be necessary to the establishment of an effective program for locating noncustodial parents, establishing paternity, obtaining support orders, and collecting support payments." 42 U.S.C. 654(13) (as amended by 1996 Act, § 395(d)(1)(D), 110 Stat. 2259). Even without such provisions, the statutory text is not the sole source of binding obligations enforceable under Section 1983. *Suter*, 503 U.S. at 359; *Wilder*, 496 U.S. at 519; *School Bd. of Nassau County* v. *Arline*, 480 U.S. 273, 286 n.15 (1987); cf. *Dennis* v. *Higgins*, 498 U.S. 439, 447 n.7 (1991); *Golden State*, 493 U.S. at 112 (enforceable right implicit in statutory language).

[25] Title IV-D leaves no doubt that compliance with the Act's specific mandates is a condition of receiving federal funds. 42 U.S.C. 603(h) (federal funds reduced if program fails to comply substantially), 652(a)(4) and (g) (conditions for Title IV-A and Title IV-D funds), 655(a)(1); 45 C.F.R. Pt. 301 (same); cf. *Pennhurst*, 451 U.S. at 24-25 (no right where States were unaware that substantive conduct was a condition of federal funding).

[26] See also 59 Fed. Reg. 66,212 (1994) ("States are required to meet all Federal requirements contained in program regulations,

In short, Judge Kleinfeld's assertion in dissent below that Title IV-D requires only that States "do a pretty good job" (Pet. App. 37a) is irreconcilable with Congress's provision of major federal funding conditioned on compliance with ever-increasing and detailed statutory directives. Congress's enduring commitment to "the country's most neglected children" (*Child Support and the Work Bonus: Hearing on S. 1842 & S. 2081 Before the Senate Comm. on Finance*, 93d Cong., 1st Sess. 59 (Sept. 25, 1973)) demands more than such casual attention to the task.

c. Petitioner does not dispute the mandatory nature of Title IV-D's language. Nor does she claim ignorance of the character and caliber of child support services that Title IV-D requires. What petitioner claims instead (Br. 7, 15-16) is that she did not know that those requirements would be enforceable under Section 1983. This Court, however, has required only that the statutory "provision in question" create binding obligations, *Golden State*, 493 U.S. at 106, and that Congress "express clearly its intent to impose conditions on the grant of federal funds," *Pennhurst*, 451 U.S. at 24. This Court has never required Congress, in addition, to notify state officials in advance that a Section 1983 action will be available. *Bell*, 461 U.S. at 790 n.17 (*Pennhurst* concerned "imposing an unexpected condition for compliance," not "the remedies available against a noncomplying State"). None of the statutes at issue in *Wilder*, *Golden State*, *Thiboutot*, or other cases in which this Court found an action under Section 1983 available, contained such language.

In any event, Section 1983's text and this Court's cases construing it independently provide sufficient notice. States, therefore, are fairly charged with the knowledge that Section 1983 "must be broadly construed," *Golden*

---

whether or not the requirements are included under [the regulatory definition of 'substantial compliance']."); 50 Fed. Reg. 19,623 (1985); 49 Fed. Reg. 36,773 (1984) ("substantial compliance" should not be "construed to imply that it would be permissible for States to neglect or exclude certain cases or classes of cases").

State, 493 U.S. at 105, and that a cause of action under Section 1983 "remains a generally and presumptively available remedy for claimed violations of federal law," *Livadas*, 114 S. Ct. at 2083. No serious federalism or comity benefit would be gained by requiring Congress to furnish still further and particularized advance notice to state officials that admittedly clear conditions on federal funding may be enforced under Section 1983, especially since such suits would result only in injunctive or declaratory relief requiring state officials to comply with those conditions in the future.

Nor would petitioner's proposal aid in identifying the "rights" secured by federal law; a provision in Title IV-D confirming the existence of a Section 1983 action would leave open that question. Even when a federal law does create enforceable rights, however, petitioner wants to require that Congress affirmatively confirm that a Section 1983 action is available. The rule is exactly the opposite: "[W]e recognize an exception to the general rule that § 1983 provides a remedy for violation of federal statutory rights only when Congress has *affirmatively withdrawn* the remedy." *Wilder*, 496 U.S. at 509 n.9 (emphasis added); see also *Livadas*, 114 S. Ct. at 2083; *Golden State*, 493 U.S. at 107 (burden on defendant to show that Congress has withdrawn Section 1983 remedy). Congress has not done so here. See pp. 27-30, *infra*.

Petitioner's proposal is also reminiscent of the failed argument that an express right of action under Section 1983 is available only if an implied right of action would be available. *Wilder*, 496 U.S. at 508 n.9. As *Wilder* recognized, Congress has already told the States, through Section 1983, that a cause of action is available to enforce rights created by federal law. Congress said it again (twice) in 1994, with particular reference to enforcement of the Social Security Act, when it enacted 42 U.S.C. 1320a-2 and 1320a-10. Nothing in principles of federalism suggests that it would be appropriate for this Court to compel a coordinate Branch to say again what it has said three times before. Congress, after all, can always

"affirmatively withdraw[] the remedy." *Wilder*, 496 U.S. at 509 n.9.

3. *Some, But Not All, Of Title IV-D's Child Support Enforcement Provisions Are Judicially Enforceable*

A statutory right will not be found if its enforcement "would strain judicial competence." *Livadas*, 114 S. Ct. at 2083. Many of the requirements that Title IV-D imposes on state child support services are straightforward administrative and ministerial tasks of a sort that courts can and do routinely enforce. For example, the requirement that a State pay the support it collects to non-Title IV-A families, 42 U.S.C. 657, is a specific, direct, and nondiscretionary duty that courts are fully capable of enforcing.[27] Likewise, due to developments in state law and the automation of government records, the requirement that States implement income withholding to enforce child support orders is mechanical and virtually ministerial, at least in cases (like respondents') in which the father and his source of income have already been located and the support order established. 42 U.S.C. 666(a)(1) and (b); 45 C.F.R. 303.100.

By contrast, Congress has expressly preserved the States' discretion with respect to other aspects of child support enforcement. For example, although Title IV-D requires States to have laws that permit the imposition of liens, state tax refund intercepts, bond requirements, and references to consumer credit reporting agencies to collect overdue support (42 U.S.C. 666(a)(3), (4), (6) and (7)), States retain discretion to decide in individual cases whether use of those procedures will "carry out the purposes of this part or would be otherwise inappropriate in the circumstances" (42 U.S.C. 666(a)). Because the propriety of such measures "will obviously vary with the circumstances of each individual case," and because Congress left those enforcement decisions to the States, re-

[27] The former requirement that States pay the first $50 of child support collected each month to an AFDC family fell in the same category. 42 U.S.C. 602(a)(8)(A)(vi), 657(b)(1), repealed 1996 Act, § 302(a), 110 Stat. 2200 (to be codified at 42 U.S.C. 657(a)(2)).

spondents would not have a right under Section 1983 to force a child support agency to take one of those measures. *Suter*, 503 U.S. at 360. Similarly, Title IV-D leaves to the State the discretion to "determin[e] when it would be appropriate to take an enforcement action in the future" (45 C.F.R. 303.6(c)(4)), preserving the State's traditional prosecutorial discretion in deciding which cases to bring to court. Decisions of that sort are not readily susceptible to judicial review or enforcement. See *Heckler* v. *Chaney*, 470 U.S. 821, 831-835 (1985); but cf. *Dunlop* v. *Bachowski*, 421 U.S. 560 (1975).

In short, whether Title IV-D creates a judicially enforceable right depends upon the nature of the provision a plaintiff seeks to enforce. Because the court of appeals did not order particular relief, it is unnecessary for this Court to parse Title IV-D and its implementing regulations to determine which provisions create rights and which do not, and what remedy would be appropriate for a violation.[28] This Court may leave it to the district court on remand to determine which claims are susceptible to judicial enforcement, based on the facts alleged, an evaluation of the applicable statutory and regulatory provisions, and traditional notions of prosecutorial discretion.

D. Congress Has Not Foreclosed Actions Under Section 1983

Even if a federal law creates private rights, judicial enforcement is not available under Section 1983 if Congress has specifically foreclosed that avenue of relief. *Golden State*, 493 U.S. at 106; see also *Robinson*, 468 U.S. at 1009-1013; *Middlesex County Sewerage Auth.* v. *National Sea Clammers Ass'n*, 453 U.S. 1, 13-20 (1981). This Court, however, "do[es] not lightly conclude that Congress intended to preclude reliance on § 1983 as a remedy for the deprivation of a federally secured right." *Wilder*, 496 U.S. at 520 (quoting *Wright* v. *City of*

[28] At least some of respondents' claims involve enforceable rights. See, *e.g.*, Complaint ¶¶ 9-23, 29-39, 42-51, 56-61 (J.A. 7-9, 10-11, 12-15) (wage withholding, parent locator searches, commencing interstate collections, administrative paternity establishment).

Roanoke Redevelopment & Housing Auth., 479 U.S. 418, 423-424 (1987)). Here, nothing in Title IV-D's text or legislative history suggests that Congress withdrew a Section 1983 remedy, cf. *Robinson*, 468 U.S. at 1009 (statutory text and legislative history directed that claims be adjudicated through special statutory scheme),[29] and individual beneficiaries have no alternative means of vindicating their own Title IV-D rights. Cf. *ibid.*; *Sea Clammers*, 453 U.S. at 13-18.[30]

The Secretary's triennial audit powers do not displace a private cause of action under Section 1983. As petitioner repeatedly notes, the Secretary audits for "substantial compliance" on a programmatic basis, rather than to vindicate the rights of individual applicants for services. The nature of the Secretary's task, combined with its infrequency, precludes characterizing it as sufficiently "comprehensive" to foreclose a Section 1983 action. *Wilder*, 496 U.S. at 521-522; *Wright*, 479 U.S. at 428

[29] The courts have divided on whether the Secretary's enforcement powers preclude a Section 1983 action. See *Howe*, 8 F.3d at 1263 (not foreclosed); *Albiston*, 7 F.3d at 268-269 (same); *King*, 829 F. Supp. at 995 (same); *Behunin*, 744 F. Supp. at 257-258 (same); *Davis*, 909 S.W.2d at 417-419 (same); see also *Wehunt*, 875 F.2d at 1575-1577 (Clark, J., dissenting) (same); *Carelli*, 923 F.2d at 1212-1216 (foreclosed on particular facts); *Oliphant*, 1992 WL 153637, at *9-*10 (foreclosed).

[30] While beneficiaries could still enforce their support rights against the absent parent under state law, that would do nothing to vindicate their federal rights under Title IV-D to receive child support services from the State (just as a plaintiff's ability to purchase educational or medical services in the marketplace does not constitute an adequate substitute for a right to educational or medical services from the State). Furthermore, the state IV-D agency has access to enforcement tools and sources of information that a beneficiary or private attorney would not. Arizona law does allow suits, under some circumstances, to compel agency action, Ariz. Rev. Stat. Ann. §§ 12-820 to 12-826 (1992 & Supp. 1994), but not for the "exercise of an administrative function involving the determination of fundamental governmental policy," *id.* § 12-820.01 (A)(2) (1992). In any event, the availability of a parallel state court action does not preclude an action under Section 1983. Cf. *Patsy* v. *Board of Regents*, 457 U.S. 496, 506-507 (1982).

("generalized powers" "to audit, enforce annual contributions contracts, and cut off federal funds" are "insufficient to indicate a congressional intention to foreclose § 1983 remedies"). In the Secretary's judgment, under the principles and limitations set forth above, private enforcement of those provisions of Title IV-D that create enforceable rights would furnish an important complement to the Secretary's necessarily macroscopic oversight of the States, by ensuring that the States carry out the specific duties to children and custodial parents that they have voluntarily assumed under Title IV-D, while at the same time affording protection for the States in those areas Congress has left to their discretion.[31] *Albiston*, 7 F.3d at 269 (audit "protect[s] important *federal* interests * * * [in] *overall* performance," while Section 1983 "safeguards the *individual AFDC recipient's interests* in the timely receipt of the mandated federal benefits").[32]

[31] This is not to suggest that States are generally lax in their enforcement of child support obligations. Under Title IV-D, States have become more aggressive and successful in establishing orders and collecting support. See generally HHS, *Child Support Enforcement: FY 1995 Preliminary Data Report* 13-36 (May 1996).

[32] Concerns voiced by petitioner and her amici that allowing actions under Section 1983 will open the litigation floodgates and divert valuable resources are misplaced. The majority of courts that have addressed the issue have already approved Section 1983 actions (see n.18, *supra*), without any of those dire predictions coming to pass. By way of comparison, no such avalanche followed this Court's decision in *Edelman*, which held that individuals can sue under Section 1983 to force States to comply with federal time limits in administering the former Aid to the Aged, Blind and Disabled program. Indeed, some of the most successful and efficient Title IV-D programs are in States where Section 1983 actions have been permitted. *Nineteenth Annual Report* 10-11. Principles of standing and ripeness may prevent claims concerning inconsequential deviations from technical statutory and regulatory requirements that resulted in no real injury to persons seeking services. Cf. *Williamson County Regional Planning Comm'n* v. *Hamilton Bank of Johnson City*, 473 U.S. 172 (1985). In addition, courts will always retain their traditional equitable discretion to withhold

Common sense also dictates that the Secretary's supervisory audit powers do not foreclose private enforcement. Congress has spent the last 20 years legislating in ever-increasing detail the standards for state child support services, and it has given the States billions of dollars of the taxpayers' money expressly conditioned on their compliance with those standards. Given the amount of money allocated and the breadth and depth of regulation, there is no basis for believing that Congress, in seeking to protect the "millions of women and children who are victimized by the nonpayment of child support" (129 Cong. Rec. 33,037 (1983) (Rep. Biaggi)), intended to rely entirely on a federal audit that occurs only once every three years and that (at least by petitioner's characterization) disregards whether fully one-fourth of Title IV-D's targeted beneficiaries is entirely neglected by the system.

---

relief when the departure from federal law is inconsequential or the state default has been corrected. See *Withrow*, 942 F.2d at 1388; *Haskins* v. *Stanton*, 794 F.2d 1273, 1277 (7th Cir. 1986). And limitations on class actions under Fed. R. Civ. P. 23 must, of course, be enforced. See also Pub. L. No. 104-134, § 504(a)(7), 110 Stat. 1321-53 (barring use of funds furnished by Legal Services Corporation to support class actions). Should litigation nevertheless prove burdensome, Congress can readily respond by imposing an exhaustion requirement or otherwise limiting the availability of Section 1983 in this context. Cf. 42 U.S.C. 1997e (imposing exhaustion requirement on prisoner suits). Finally, if the specific requirements and timetables that Congress has enacted and strengthened under Title IV-D prove unworkable in practice, that is a problem for Congress to fix by amending Title IV-D itself.

CONCLUSION

The judgment of the court of appeals should be affirmed, with provision for remand to the district court for further proceedings with respect to respondents' particular claims.

Respectfully submitted.

WALTER DELLINGER
Acting Solicitor General

FRANK W. HUNGER
Assistant Attorney General

EDWIN S. KNEEDLER
Deputy Solicitor General

PATRICIA A. MILLETT
Assistant to the Solicitor General

WILLIAM KANTER
ALFRED MOLLIN
Attorneys

OCTOBER 1996

APPENDIX

Title IV-D of the Social Security Act, 42 U.S.C. 651 *et seq.*, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, provides [1]:

TITLE 42—THE PUBLIC HEALTH AND WELFARE

CHAPTER 7—SOCIAL SECURITY

SUBCHAPTER IV—GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES

Part D—Child Support and Establishment of Paternity

Sec. 651. Authorization of appropriations

For the purpose of enforcing the support obligations owed by *absent* **noncustodial** parents to their children and the spouse (or former spouse) with whom such children are living, locating *absent* **noncustodial** parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for *aid* **assistance under a State program funded** under part A of this subchapter) for whom such assistance is requested, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part.

Sec. 652. Duties of Secretary

(a) Establishment of separate organizational unit; duties

The Secretary shall establish, within the Department of Health and Human Services a separate organizational unit,

---

[1] Statutory language added by the 1996 Act appears in bold print. Statutory language deleted by the 1996 Act is italicized.

under the direction of a designee of the Secretary, who shall report directly to the Secretary and who shall—

(1) establish such standards for State programs for locating *absent* **noncustodial** parents, establishing paternity, and obtaining child support and support for the spouse (or former spouse) with whom the *absent* **noncustodial** parent's child is living as he determines to be necessary to assure that such programs will be effective;

(2) establish minimum organizational and staffing requirements for State units engaged in carrying out such programs under plans approved under this part;

(3) review and approve State plans for such programs;

(4) evaluate the implementation of State programs established pursuant to such plan, conduct such audits of State programs established under the plan approved under this part as may be necessary to assure their conformity with the requirements of this part, and, not less often than once every three years (or not less often than annually in the case of any State to which a reduction is being applied under section 603(h)(1) of this title, or which is operating under a corrective action plan in accordance with section 603(h)(2) of this title), conduct a complete audit of the programs established under such plan in each State and determine for the purposes of the penalty provision of section 603(h) of this title whether the actual operation of such programs in each State conforms to the requirements of this part;

(4)(A) review data and calculations transmitted by State agencies pursuant to section 654(15)(B) on State program accomplishments with respect to performance indicators for purposes of subsection (g) of this section and section 658;

(B) review annual reports submitted pursuant to section 654(15)(A) and, as appropriate, pro-

vide to the State comments, recommendations for additional or alternative corrective actions, and technical assistance; and

(C) conduct audits, in accordance with the Government auditing standards of the Comptroller General of the United States—

(i) at least once every 3 years (or more frequently, in the case of a State which fails to meet the requirements of this part concerning performance standards and reliability of program data) to assess the completeness, reliability, and security of the data and the accuracy of the reporting systems used in calculating performance indicators under subsection (g) of this section and section 658;

(ii) of the adequacy of financial management of the State program operated under the State plan approved under this part, including assessments of—

(I) whether Federal and other funds made available to carry out the State program are being appropriately expended, and are properly and fully accounted for; and

(II) whether collections and disbursements of support payments are carried out correctly and are fully accounted for; and

(iii) for such other purposes as the Secretary may find necessary;

(5) assist States in establishing adequate reporting procedures and maintain records of the operations of programs established pursuant to this part in each State, **and establish procedures to be followed by States for collecting and reporting information re-**

quired to be provided under this part, and establish uniform definitions (including those necessary to enable the measurement of State compliance with the requirements of this part relating to expedited processes) to be applied in following such procedures;

(6) maintain records of all amounts collected and disbursed under programs established pursuant to the provisions of this part and of the costs incurred in collecting such amounts;

(7) provide technical assistance to the States to help them establish effective systems for collecting child and spousal support and establishing paternity, **and specify the minimum requirements of an affidavit to be used for the voluntary acknowledgment of paternity which shall include the social security number of each parent and, after consultation with the States, other common elements as determined by such designee;**

(8) receive applications from States for permission to utilize the courts of the United States to enforce court orders for support against *absent* **noncustodial** parents and, upon a finding that (A) another State has not undertaken to enforce the court order of the originating State against the *absent* **noncustodial** parent within a reasonable time, and (B) that utilization of the Federal courts is the only reasonable method of enforcing such order, approve such applications;

(9) operate the **Federal** Parent Locator Service established by section 653 of this title; *and*

(10) not later than three months after the end of each fiscal year, beginning with the year 1977, submit to the Congress a full and complete report on all activities undertaken pursuant to the provisions of this part, which report shall include, but not be limited to, the following:

(A) total program costs and collections set forth in sufficient detail to show the cost to the

States and the Federal Government, the distribution of collections to families, State and local governmental units, and the Federal Government; and an identification of the financial impact of the provisions of *this part;* **this part, including—**

(i) the total amount of child support payments collected as a result of services furnished during the fiscal year to individuals receiving services under this part;

(ii) the cost to the States and to the Federal Government of so furnishing the services; and

(iii) the number of cases involving families—

(I) who became ineligible for assistance under State programs funded under part A during a month in the fiscal year; and

(II) with respect to whom a child support payment was received in the month;

(B) costs and staff associated with the Office of Child Support Enforcement;

(C) the following data, *with the data required under each clause being separately stated for cases* **separately stated for cases** where the child is receiving *aid to families with dependent children* **assistance under a State program funded under part A** (or foster care maintenance payments under part E of this subchapter), *cases where the child was formerly receiving* **or formerly received** *such aid* **such assistance** or payments and the State is continuing to collect support assigned to it *under section 602(a)(26) or* **pursuant to section 608 (a)(3) or under section** 671(a)(17) **or 1912**

of this title, and **for** all other cases under this part:

(i) the total number of cases in which a support obligation has been established in the fiscal year for which the report is submitted, *and the total amount of such obligations*;

(ii) the total number of cases in which a support obligation has been established, *and the total amount of such obligations*;

(iii) the number of cases *described in clause (i) in which support was collected during such fiscal year, and the total amount of such collections;* **in which support was collected during the fiscal year;**

(iv) the number of cases described in clause (ii) in which support was collected during such fiscal year, and the total amount of such collections; and

(iv) the total amount of support collected during such fiscal year and distributed as current support;

(v) the total amount of support collected during such fiscal year and distributed as arrearages;

(vi) the total amount of support due and unpaid for all fiscal years; and

(v) **(vii)** the number of child support cases filed in each State in such fiscal year, and the amount of the collections made in each State in such fiscal year, on behalf of children residing in another State or against parents residing in another State;

(D) the status of all State plans under this part as of the end of the fiscal year last ending before the report is submitted, together with an explanation of any problems which are delaying or preventing approval of State plans under this part;

(E) data, by State, on the use of the Federal Parent Locator Service, and the number of locate requests submitted without the *absent* **noncustodial** parent's social security account number;

(F) the number of cases, by State, in which an applicant for or recipient of *aid under a State plan approved* **assistance under a State program funded** under part A of this subchapter has refused to cooperate in identifying and locating the *absent* **noncustodial** parent and the number of cases in which refusal so to cooperate is based on good cause (as determined *in accordance with the standards referred to in section 602(a)(26)(B)(ii) of this title* **by the State**);

(G) data, by State, *on the use of Federal courts and* on use of the Internal Revenue Service for collections, the number of court orders on which collections were made, the number of paternity determinations made and the number of parents located, in sufficient detail to show the cost and benefits to the States and to the Federal Government;

(H) the major problems encountered which have delayed or prevented implementation of the provisions of this part during the fiscal year last ending prior to the submission of such report; *and*

(I) the amount of administrative costs which are expended in each functional category of expenditures, including establishment of paternity; **and**

(J) compliance, by State, with the standards established pursuant to subsections (h) and (i).

The information contained in any such report under subparagraph (A) shall specifically include (i) the total amount of child support payments collected as a result of services furnished during the fiscal year involved to individuals under section 654(6) of this title, (ii) the cost to the States and to the Federal Government of furnishing such services to those individuals, and (iii) the extent to which the furnishing of such services was successful in providing sufficient support to those individuals to assure that they did not require assistance under the State plan approved under part A of this subchapter.; **and**

(11) not later than October 1, 1996, after consulting with the State directors of programs under this part, promulgate forms to be used by States in interstate cases for—

(A) collection of child support through income withholding;

(B) imposition of liens; and

(C) administrative subpoenas.

(b) Certification of child support obligations to Secretary of the Treasury for collection

The Secretary shall, upon the request of any State having in effect a State plan approved under this part, certify to the Secretary of the Treasury for collection pursuant to the provisions of section 6305 of the Internal Revenue Code of 1986 the amount of any child support obligation (including any support obligation with respect to the parent who is living with the child and receiving *aid under the State plan approved under part A* **assistance under the State program funded under part A** of this subchapter) which is assigned to such State or is undertaken to be collected by such State pursuant to section *654(6)* **654(4)** of this title. No amount may be certified for collection under this subsection except the amount of the delinquency under a court or administrative order for

support and upon a showing by the State that such State has made diligent and reasonable efforts to collect such amounts utilizing its own collection mechanisms, and upon an agreement that the State will reimburse the Secretary of the Treasury for any costs involved in making the collection. All reimbursements shall be credited to the appropriation accounts which bore all or part of the costs involved in making the collections. The Secretary after consultation with the Secretary of the Treasury may, by regulation, establish criteria for accepting amounts for collection and for making certification under this subsection including imposing such limitations on the frequency of making such certifications under this subsection.

(c) Payment of child support collections to States

The Secretary of the Treasury shall from time to time pay to each State for distribution in accordance with the provisions of section 657 of this title the amount of each collection made on behalf of such State pursuant to subsection (b) of this section.

(d) Child support management information system

(1) Except as provided in paragraph (3), the Secretary shall not approve the initial and annually updated advance automated data processing planning document, referred to in section 654(16) of this title, unless he finds that such document, when implemented, will generally carry out the objectives of the management system referred to in such subsection, and such document—

(A) provides for the conduct of, and reflects the results of, requirements analysis studies, which include consideration of the program mission, functions, organization, services, constraints, and current support, of, in, or relating to, such system.

(B) contains a description of the proposed management system referred to in section 655

(a)(1)(B) of this title, including a description of information flows, input data, and output reports and uses,

(C) sets forth the security and interface requirements to be employed in such management system,

(D) describes the projected resource requirements for staff and other needs, and the resources available or expected to be available to meet such requirements,

(E) contains an implementation plan and backup procedures to handle possible failures,

(F) contains a summary of proposed improvement of such management system in terms of qualitative and quantitative benefits, and

(G) provides such other information as the Secretary determines under regulation is necessary.

(2)(A) The Secretary shall through the separate organizational unit established pursuant to subsection (a) of this section, on a continuing basis, review, assess, and inspect the planning, design, and operation of, management information systems referred to in section 655(a)(1)(B) of this title, with a view to determining whether, and to what extent, such systems meet and continue to meet requirements imposed under paragraph (1) and the conditions specified under section 654(16) of this title.

(B) If the Secretary finds with respect to any statewide management information system referred to in section 655(a)(1)(B) of this title that there is a failure substantially to comply with criteria, requirements, and other undertakings, prescribed by the advance automated data processing planning document theretofore approved by the Secretary with respect to such

system, then the Secretary shall suspend his approval of such document until there is no longer any such failure of such system to comply with such criteria, requirements, and other undertakings so prescribed.

(3) The Secretary may waive any requirement of paragraph (1) or any condition specified under section 654(16) of this title with respect to a State if—

(A) the State demonstrates to the satisfaction of the Secretary that the State has an alternative system or systems that enable the State, for purposes of section 603(h) of this title, to be in substantial compliance with other requirements of this part; and

(B) (i) the waiver meets the criteria of paragraphs (1), (2), and (3) of section *1315(c)* **1315(b)** of this title, or

(ii) the State provides assurances to the Secretary that steps will be taken to otherwise improve the State's child support enforcement program.

(e) Technical assistance to States

The Secretary shall provide such technical assistance to States as he determines necessary to assist States to plan, design, develop, or install and provide for the security of, the management information systems referred to in section 655(a)(1)(B) of this title.

(f) Regulations

The Secretary shall issue regulations to require that State agencies administering the child support enforcement program under this part petition for the inclusion of medical support as part of any child support order whenever health care coverage is available to the *absent*

noncustodial parent at a reasonable cost. Such regulation shall also provide for improved information exchange between such State agencies and the State agencies administering the State medicaid programs under subchapter XIX of this chapter with respect to the availability of health insurance coverage.

(g) Performance standards for State paternity establishment programs

(1) A State's program under this part shall be found, for purposes of section 603(h) of this title, not to have complied substantially with the requirements of this part unless, for any fiscal year beginning on or after October 1, 1994, its paternity establishment percentage for such fiscal year is based on reliable data and (rounded to the nearest whole percentage point) equals or exceeds—

(A) *75* **90** percent;

(B) for a State with a paternity establishment percentage of not less than 75 percent but less than 90 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 2 percentage points;

*(B)***(C)** for a State with a paternity establishment percentage of not less than 50 percent but less than 75 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 3 percentage points;

*(C)***(D)** for a State with a paternity establishment percentage of not less than 45 percent but less than 50 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 4 percentage points;

*(D)***(E)** for a State with a paternity establishment percentage of not less than 40 percent but less than 45 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 5 percentage points; or

*(E)***(F)** for a State with a paternity establishment percentage of less than 40 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 6 percentage points.

In determining compliance under this section, a State may use as its paternity establishment percentage either the State's IV-D paternity establishment percentage (as defined in paragraph (2)(A)) or the State's statewide paternity establishment percentage (as defined in paragraph (2)(B)).

(2) For purposes of this section—

(A) the term *"paternity establishment percentage* **IV-D paternity establishment percentage**" means, with respect to a State *(or all States, as the case may be)* for a fiscal year, the ratio (expressed as a percentage) that the total number of children—

(i) who have been born out of wedlock,

(ii)(I) except as provided in the last sentence of this paragraph, with respect to whom *aid is being paid under the State's plan approved under part A or E* **assistance was being provided under the State program funded under part A** of this subchapter in the fiscal year, at the option of the State, as of the end of such year, or (II) with respect to whom services are being provided under the State's plan approved under this part in the fiscal year or,

at the option of the State, as of the end of such year pursuant to an application submitted under section *654(6)* **654(4)(A)(ii)** of this title, and

(iii) the paternity of whom has been established or acknowledged, bears to the total number of children born out of wedlock and (except as provided in such last sentence) with respect to whom *aid was being paid under the State's plan approved under part A or E* **assistance was being provided under the State program funded under part A** of this subchapter as of the end of the preceding fiscal year or with respect to whom services were being provided under the State's plan approved under this part as of the end of the preceding fiscal year pursuant to an application submitted under section *654(6)* **654(4)(A)(ii)** of this title; *and*

(B) the term 'statewide paternity establishment percentage' means, with respect to a State for a fiscal year, the ratio (expressed as a percentage) that the total number of minor children—

(i) who have been born out of wedlock, and

(ii) the paternity of whom has been established or acknowledged during the fiscal year, bears to the total number of children born out of wedlock during the preceding fiscal year; and

*(B)***(C)** the term "reliable data" means the most recent data available which are found by the Secretary to be reliable for purposes of this section.

For purposes of subparagraph (A), the total number of children shall not include any child *who is a dependent child* **with respect to whom assistance is being provided under the State program funded under part A** by reason of the death of a parent unless paternity is established for such child or any child with respect to whom an applicant or recipient is found **by the State** *to have good cause for refusing to cooperate under section 602(a)(26)* **to qualify for a good cause or other exception to cooperation pursuant to section 654(29)** of this title or any child with respect to whom the State agency administering the plan under part E of this subchapter determines (as provided in section 654(4)(B) of this title) that it is against the best interests of such child to do so.

(3)*(A) The requirements of this subsection are in addition to and shall not supplant any other requirement (that is not inconsistent with such requirements) established in regulations by the Secretary for the purpose of determining (for purposes of section 603(h) of this title) whether the program of a State operated under this part shall be treated as complying substantially with the requirements of this part.*

*(B)***(A)** The Secretary may modify the requirements of this subsection to take into account such additional variables as the Secretary identifies (including *the percentage of children born out of wedlock in a State* **the percentage of children in a State who are born out of wedlock or for whom support has not been established**) that affect the ability of a State to meet the requirements of this subsection.

*(C)***(B)** The Secretary shall submit an annual report to the Congress that sets forth the data upon which the paternity establishment percentages for States for a fiscal year are based,

lists any additional variables the Secretary has identified under subparagraph (A), and describes State performance in establishing paternity.

(h) Prompt State response to requests for child support assistance

The standards required by subsection (a)(1) of this section shall include standards establishing time limits governing the period or periods within which a State must accept and respond to requests (from States, jurisdictions thereof, or individuals who apply for services furnished by the State agency under this part or with respect to whom an assignment *under section 602(a)(26)* **pursuant to section 608(a)(3)** of this title is in effect) for assistance in establishing and enforcing support orders, including requests to locate *absent* **noncustodial** parents, establish paternity, and initiate proceedings to establish and collect child support awards.

(i) Prompt State distribution of amounts collected as child support

The standards required by subsection (a)(1) of this section shall include standards establishing time limits governing the period or periods within which a State must distribute, in accordance with section 657 of this title, amounts collected as child support pursuant to the State's plan approved under this part.

(j) Out of any money in the Treasury of the United States not otherwise appropriated, there is hereby appropriated, to the Secretary for each fiscal year an amount equal to 1 percent of the total amount paid to the Federal Government pursuant to section 657(a) during the immediately preceding fiscal year (as determined on the basis of the most recent reliable data available to the Secretary as of the end of the third calendar quarter following

the end of such preceding fiscal year, to cover costs incurred by the Secretary for—

(1) information dissemination and technical assistance to States, training of State and Federal staff, staffing studies, and related activities needed to improve programs under this part (including technical assistance concerning State automated systems required by this part); and

(2) research, demonstration, and special projects of regional or national significance relating to the operation of State programs under this part.

The amount appropriated under this subsection shall remain available until expended.

(k)(1) If the Secretary receives a certification by a State agency in accordance with the requirements of section 654(31) that an individual owes arrearages of child support in an amount exceeding $5,000, the Secretary shall transmit such certification to the Secretary of State for action (with respect to denial, revocation, or limitation of passports) pursuant to paragraph (2).

(2) The Secretary of State shall, upon certification by the Secretary transmitted under paragraph (1), refuse to issue a passport to such individual, and may revoke, restrict, or limit a passport issued previously to such individual.

(3) The Secretary and the Secretary of State shall not be liable to an individual for any action with respect to a certification by a State agency under this section.

Sec. 653. **Federal** Parent Locator Service

(a) Establishment; purpose

The Secretary shall establish and conduct a **Federal** Parent Locator Service, under the direction of the designee of the Secretary referred to in section 652(a) of

this title, which shall be used to obtain and transmit to any authorized person (as defined in subsection (c)) *of this section information as to the whereabouts of any absent parent when such information is to be used to locate such parent for the purpose of enforcing support obligations against such parent,* **for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, or enforcing child custody or visitation orders—**

(1) information on, or facilitating the discovery of, the location of any individual—

(A) who is under an obligation to pay child support or provide child custody or visitation rights;

(B) against whom such an obligation is sought;

(C) to whom such an obligation is owed,

including the individual's social security number (or numbers), most recent address, and the name, address, and employer identification number of the individual's employer;

(2) information on the individual's wages (or other income) from, and benefits of, employment (including rights to or enrollment in group health care coverage); and

(3) information on the type, status, location, and amount of any assets of, or debts owed by or to, any such individual.

(b) Disclosure of information to authorized persons

Upon request, filed in accordance with subsection (d) of this section of any authorized person (as defined in subsection (c) of this section) for the *social security account number (or numbers, if the individual involved has more than one such number) and the most recent address*

and place of employment of any absent parent **information described in subsection (a)**, the Secretary shall, notwithstanding any other provision of law, provide through the **Federal** Parent Locator Service such information to such person, if such information—

(1) is contained in any files or records maintained by the Secretary or by the Department of Health and Human Services; or

(2) is not contained in such files or records, but can be obtained by the Secretary, under the authority conferred by subsection (e) of this section, from any other department, agency, or instrumentality of the United States or of any State.

No information shall be disclosed to any person if the disclosure of such information would contravene the national policy or security interests of the United States or the confidentiality of census data. The Secretary shall give priority to requests made by any authorized person described in subsection (c)(1) of this section. **No information shall be disclosed to any person if the State has notified the Secretary that the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the custodial parent or the child of such parent. Information received or transmitted pursuant to this section shall be subject to the safeguard provisions contained in section 654(26).**

(c) "Authorized person" defined

As used in subsection (a) of this section, the term "authorized person" means—

(1) any agent or attorney of any State having in effect a plan approved under this part, who has the duty or authority under such plans to seek to recover any amounts owed as child and spousal *support* **sup-**

port or to seek to enforce orders providing child custody or visitation rights (including, when authorized under the State plan, any official of a political subdivision);

(2) the court which has authority to issue an order against *an absent* **a noncustodial** parent for the support and maintenance of a child, *or any agent of such court, and* **or to issue an order against a resident parent for child custody or visitation rights, or any agent of such court;**

(3) the resident parent, legal guardian, attorney, or agent of a child (other than a child receiving *aid under part A of this subchapter* **assistance under a State program funded under part A**) (as determined by regulations prescribed by the Secretary) without regard to the existence of a court order against *an absent* **a noncustodial** parent who has a duty to support and maintain any such child.

(d) Form and manner of request for information

A request for information under this section shall be filed in such manner and form as the Secretary shall by regulation prescribe and shall be accompanied or supported by such documents as the Secretary may determine to be necessary.

(e) Compliance with request; search of files and records by head of any department, etc., of United States; transmittal of information to Secretary; reimbursement for cost of search; fees

(1) Whenever the Secretary receives a request submitted under subsection (b) of this section which he is reasonably satisfied meets the criteria established by subsections (a), (b), and (c) of this section, he shall promptly undertake to provide the information requested from the files and records maintained

by any of the departments, agencies, or instrumentalities of the United States or of any State.

(2) Notwithstanding any other provision of law, whenever the individual who is the head of any department, agency, or instrumentality of the United States receives a request from the Secretary for information authorized to be provided by the Secretary under this section, such individual shall promptly cause a search to be made of the files and records maintained by such department, agency, or instrumentality with a view to determining whether the information requested is contained in any such files or records. If such search discloses the information requested, such individual shall immediately transmit such information to the Secretary, except that if any information is obtained the disclosure of which would contravene national policy or security interests of the United States or the confidentiality of census data, such information shall not be transmitted and such individual shall immediately notify the Secretary. If such search fails to disclose the information requested, such individual shall immediately so notify the Secretary. The costs incurred by any such department, agency, or instrumentality of the United States or of any State in providing such information to the Secretary shall be reimbursed by him **in an amount which the Secretary determines to be reasonable payment for the information exchange (which amount shall not include payment for the costs of obtaining, compiling, or maintaining the information)**. Whenever such services are furnished to an individual specified in subsection (c)(3) of this section, a fee shall be charged such individual. The fee so charged shall be used to reimburse the Secretary or his delegate for the expense of providing such services.

(3) The Secretary of Labor shall enter into an agreement with the Secretary to provide prompt ac-

cess for the Secretary (in accordance with this subsection) to the wage and unemployment compensation claims information and data maintained by or for the Department of Labor or State employment security agencies.

(f) Arrangements and cooperation with State agencies

The Secretary, in carrying out his duties and functions under this section, shall enter into arrangements with State agencies administering State plans approved under this part for such State agencies to accept from resident parents, legal guardians, or agents of a child described in subsection (c)(3) of this section and to transmit to the Secretary requests for information with regard to the whereabouts of *absent* **noncustodial** parents and otherwise to cooperate with the Secretary in carrying out the purposes of this section.

(g) Reimbursement for reports by State agencies.

The Secretary may reimburse Federal and State agencies for the costs incurred by such entities in furnishing information requested by the Secretary under this section in an amount which the Secretary determines to be reasonable payment for the information exchange (which amount shall not include payment for the costs of obtaining, compiling, or maintaining the information).

(h) Federal case registry of child support orders.

(1) In general.—Not later than October 1, 1998, in order to assist States in administering programs under State plans approved under this part and programs funded under part A, and for the other purposes specified in this section, the Secretary shall establish and maintain in the Federal Parent Locator Service an automated registry (which shall be known as the 'Federal Case Registry of Child Support Orders'), which shall contain abstracts of support orders and other information described in paragraph (2) with respect to each case in each State case registry maintained pursuant to section 654A(e), as furnished (and regularly updated), pursuant to section 654A(f), by State agencies administering programs under this part.

(2) Case information. The information referred to in paragraph (1) with respect to a case shall be such information as the Secretary may specify in regulations (including the names, social security numbers or other uniform identification numbers, and State case identification numbers) to identify the individuals who owe or are owed support (or with respect to or on behalf of whom support obligations are sought to be established), and the State or States which have the case.

(i) National directory of new hires.

(1) In general.—In order to assist States in administering programs under State plans approved under this part and programs funded under part A, and for the other purposes specified in this section, the Secretary shall, not later than October 1, 1997, establish and maintain in the Federal Parent Locator Service an automated directory to be known as the National Directory of New Hires, which shall contain the information supplied pursuant to section 653A(g)(2).

(2) Entry of data.—Information shall be entered into the data base maintained by the National Directory of New Hires within 2 business days of receipt pursuant to section 653A(g)(2).

(3) Administration of Federal tax laws.—The Secretary of the Treasury shall have access to the information in the National Directory of New Hires for purposes of administering section 32 of the Internal

Revenue Code of 1986, or the advance payment of the earned income tax credit under section 3507 of such Code, and verifying a claim with respect to employment in a tax return.

(4) List of multistate employers.—The Secretary shall maintain within the National Directory of New Hires a list of multistate employers that report information regarding newly hired employees pursuant to section 653A(b)(1)(B), and the State which each such employer has designated to receive such information.

(j) Information comparisons and other disclosures.

(1) Verification by Social Security Administration.—

(A) In general.—The Secretary shall transmit information on individuals and employers maintained under this section to the Social Security Administration to the extent necessary for verification in accordance with subparagraph (B).

(B) Verification by SSA.—The Social Security Administration shall verify the accuracy of, correct, or supply to the extent possible, and report to the Secretary, the following information supplied by the Secretary pursuant to subparagraph (A):

(i) The name, social security number, and birth date of each such individual.

(ii) The employer identification number of each such employer.

(2) Information comparison.—For the purpose of locating individuals in a paternity establishment case or a case involving the establishment, modification, or enforcement of a support order, the Secretary shall—

(A) compare information in the National Directory of New Hires against information in the support case abstracts in the Federal Case Registry of Child Support Orders not less often than every 2 business days; and

(B) within 2 business days after such a comparison reveals a match with respect to an individual, report the information to the State agency responsible for the case.

(3) Information comparisons and disclosures of information in all registries for Title IV program purposes.—To the extent and with the frequency that the Secretary determines to be effective in assisting States to carry out their responsibilities under programs operated under this part and programs funded under part A, the Secretary shall—

(A) compare the information in each component of the Federal Parent Locator Service maintained under this section against the information in each other such component (other than the comparison required by paragraph (2)), and report instances in which such a comparison reveals a match with respect to an individual to State agencies operating such programs; and

(B) disclose information in such registries to such State agencies.

(4) Provision of new hire information to the Social Security Administration.—The National Directory of New Hires shall provide the Commissioner of Social Security with all information in the National Directory.

(5) Research.—The Secretary may provide access to information reported by employers pursuant to section 653A(b) for research purposes found by the Secretary to be likely to contribute to achieving

the purposes of part A or this part, but without personal identifiers.

(k) Fees.—

(1) For SSA verification.—The Secretary shall reimburse the Commissioner of Social Security, at a rate negotiated between the Secretary and the Commissioner, for the costs incurred by the Commissioner in performing the verification services described in subsection (j).

(2) For information from State directories of new hires.—The Secretary shall reimburse costs incurred by State directories of new hires in furnishing information as required by subsection (j)(3), at rates which the Secretary determines to be reasonable (which rates shall not include payment for the costs of obtaining, compiling, or maintaining such information).

(3) For information furnished to State and Federal agencies.—A State or Federal agency that receives information from the Secretary pursuant to this section shall reimburse the Secretary for costs incurred by the Secretary in furnishing the information, at rates which the Secretary determines to be reasonable (which rates shall include payment for the costs of obtaining, verifying, maintaining, and comparing the information).

(l) Restriction on disclosure and use.—Information in the Federal Parent Locator Service, and information resulting from comparisons using such information, shall not be used or disclosed except as expressly provided in this section, subject to section 6103 of the Internal Revenue Code of 1986.

(m) Information integrity and security.—The Secretary shall establish and implement safeguards with respect to the entities established under this section designed to—

(1) ensure the accuracy and completeness of information in the Federal Parent Locator Service; and

(2) restrict access to confidential information in the Federal Parent Locator Service to authorized persons, and restrict use of such information to authorized purposes.

(n) Federal Government reporting.—Each department, agency, and instrumentality of the United States shall on a quarterly basis report to the Federal Parent Locator Service the name and social security number of each employee and the wages paid to the employee during the previous quarter, except that such a report shall not be filed with respect to an employee of a department, agency, or instrumentality performing intelligence or counterintelligence functions, if the head of such department, agency, or instrumentality has determined that filing such a report could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(o) Recovery of costs.—Out of any money in the Treasury of the United States not otherwise appropriated, there is hereby appropriated to the Secretary for each fiscal year an amount equal to 2 percent of the total amount paid to the Federal Government pursuant to section 657(a) during the immediately preceding fiscal year (as determined on the basis of the most recent reliable data available to the Secretary as of the end of the 3rd calendar quarter following the end of such preceding fiscal year), to cover costs incurred by the Secretary for operation of the Federal Parent Locator Service under this section, to the extent such costs are not recovered through user fees.

(p) Support order defined.—As used in this part, the term 'support order' means a judgment, decree, or or-

der, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing State, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief.

Sec. 653A. State Directory Of New Hires.

(a) Establishment.—

(1) In general.—

(A) Requirement for States that have no directory.—Except as provided in subparagraph (B), not later than October 1, 1997, each State shall establish an automated directory (to be known as the 'State Directory of New Hires') which shall contain information supplied in accordance with subsection (b) by employers on each newly hired employee.

(B) States with new hire reporting law in existence.—A State which has a new hire reporting law in existence on the date of the enactment of this section may continue to operate under the State law, but the State must meet the requirements of subsection (g)(2) not later than October 1, 1997, and the requirements of this section (other than subsection (g)(2)) not later than October 1, 1998.

(2) Definitions.—As used in this section:

(A) Employee.—The term 'employee'—

(i) means an individual who is an employee within the meaning of chapter 24

of the Internal Revenue Code of 1986; and

(ii) does not include an employee of a Federal or State agency performing intelligence or counterintelligence functions, if the head of such agency has determined that reporting pursuant to paragraph (1) with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(B) Employer.—

(i) In general.—The term 'employer' has the meaning given such term in section 3401(d) of the Internal Revenue Code of 1986 and includes any governmental entity and any labor organization.

(ii) Labor organization.—The term 'labor organization' shall have the meaning given such term in section 2(5) of the National Labor Relations Act, and includes any entity (also known as a 'hiring hall') which is used by the organization and an employer to carry out requirements described in section 8(f)(3) of such Act of an agreement between the organization and the employer.

(b) Employer information.—

(1) Reporting requirement.—

(A) In general.—Except as provided in subparagraphs (B) and (C), each employer shall furnish to the Directory of New Hires of the State in which a newly hired employee works, a report that contains the name, address, and

social security number of the employee, and the name and address of, and identifying number assigned under section 6109 of the Internal Revenue Code of 1986 to, the employer.

(B) Multistate employers.—An employer that has employees who are employed in 2 or more States and that transmits reports magnetically or electronically may comply with subparagraph (A) by designating 1 State in which such employer has employees to which the employer will transmit the report described in subparagraph (A), and transmitting such report to such State. Any employer that transmits reports pursuant to this subparagraph shall notify the Secretary in writing as to which State such employer designates for the purpose of sending reports.

(C) Federal Government employers.—Any department, agency, or instrumentality of the United States shall comply with subparagraph (A) by transmitting the report described in subparagraph (A) to the National Directory of New Hires established pursuant to section 653.

(2) Timing of report.—Each State may provide the time within which the report required by paragraph (1) shall be made with respect to an employee, but such report shall be made—

(A) not later than 20 days after the date the employer hires the employee; or

(B) in the case of an employer transmitting reports magnetically or electronically, by 2 monthly transmissions (if necessary) not less than 12 days nor more than 16 days apart.

(c) Reporting format and method.—Each report required by subsection (b) shall be made on a W-4 form or, at the option of the employer, an equivalent form, and may be

transmitted by 1st class mail, magnetically, or electronically.

(d) Civil money penalties on noncomplying employers.—The State shall have the option to set a State civil money penalty which shall be less than—

(1) $25; or

(2) $500 if, under State law, the failure is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report.

(e) Entry of employer information.—Information shall be entered into the data base maintained by the State Directory of New Hires within 5 business days of receipt from an employer pursuant to subsection (b).

(f) Information comparisons.—

(1) In general.—Not later than May 1, 1998, an agency designated by the State shall, directly or by contract, conduct automated comparisons of the social security numbers reported by employers pursuant to subsection (b) and the social security numbers appearing in the records of the State case registry for cases being enforced under the State plan.

(2) Notice of match.—When an information comparison conducted under paragraph (1) reveals a match with respect to the social security number of an individual required to provide support under a support order, the State Directory of New Hires shall provide the agency administering the State plan approved under this part of the appropriate State with the name, address, and social security number of the employee to whom the social security number is assigned, and the name and address of, and identifying number assigned under section 6109 of the Internal Revenue Code of 1986 to, the employer.

(g) Transmission of information.—

(1) Transmission of wage withholding notices to employers.—Within 2 business days after the date information regarding a newly hired employee is entered into the State Directory of New Hires, the State agency enforcing the employee's child support obligation shall transmit a notice to the employer of the employee directing the employer to withhold from the income of the employee an amount equal to the monthly (or other periodic) child support obligation (including any past due support obligation) of the employee, unless the employee's income is not subject to withholding pursuant to section 666(b)(3).

(2) Transmissions to the National Directory of New Hires.—

(A) New hire information.—Within 3 business days after the date information regarding a newly hired employee is entered into the State Directory of New Hires, the State Directory of New Hires shall furnish the information to the National Directory of New Hires.

(B) Wage and unemployment compensation information.—The State Directory of New Hires shall, on a quarterly basis, furnish to the National Directory of New Hires extracts of the reports required under section 303(a)(6) to be made to the Secretary of Labor concerning the wages and unemployment compensation paid to individuals, by such dates, in such format, and containing such information as the Secretary of Health and Human Services shall specify in regulations.

(3) Business day defined.—As used in this subsection, the term 'business day' means a day on which State offices are open for regular business.

(h) Other uses of new hire information.—

(1) Location of child support obligors.—The agency administering the State plan approved under this part shall use information received pursuant to subsection (f)(2) to locate individuals for purposes of establishing paternity and establishing, modifying, and enforcing child support obligations, and may disclose such information to any agent of the agency that is under contract with the agency to carry out such purposes.

(2) Verification of eligibility for certain programs.—A State agency responsible for administering a program specified in section 1137(b) shall have access to information reported by employers pursuant to subsection (b) of this section for purposes of verifying eligibility for the program.

(3) Administration of employment security and workers' compensation.—State agencies operating employment security and workers' compensation programs shall have access to information reported by employers pursuant to subsection (b) for the purposes of administering such programs.

Sec. 654. State plan for child and spousal support

A State plan for child and spousal support must—

(1) provide that it shall be in effect in all political subdivisions of the State;

(2) provide for financial participation by the State;

(3) provide for the establishment or designation of a single and separate organizational unit, which meets such staffing and organizational requirements as the Secretary may by regulation prescribe, within the State to administer the plan;

(4) *provide that such State will undertake—*

(A) in the case of a child born out of wedlock with respect to whom an assignment under section 602(a)(26) of this title or section 1396k of this title is effective, to establish the paternity of such child, unless the agency administering the plan of the State under part A of this subchapter determines in accordance with the standards prescribed by the Secretary pursuant to section 602(a)(26)(B) of this title that it is against the best interests of the child to do so, or, in the case of such child with respect to whom an assignment under section 1396k of this title is in effect, the State agency administering the plan approved under subchapter XIX of this chapter determines pursuant to section 1396k(a)(1)(B) of this title that it is against the best interests of the child to do so, and

(B) in the case of any child with respect to whom such assignment is effective, including an assignment with respect to a child on whose behalf a State agency is making foster care maintenance payments under part E of this subchapter, to secure support for such child from his parent (or from any other person legally liable for such support), and from such parent for his spouse (or former spouse) receiving aid to families with dependent children or medical assistance under a State plan approved under subchapter XIX of this chapter (but only if a support obligation has been established with respect to such spouse, and only if the support obligation established with respect to the child is being enforced under the plan), utilizing any reciprocal arrangements adopted with other States (unless the agency administering the plan of the State under part A or E of this subchapter determines in accordance with the standards

prescribed by the Secretary pursuant to section 602(a)(26)(B) of this title that it is against the best interests of the child to do so), except that when such arrangements and other means have proven ineffective, the State may utilize the Federal courts to obtain or enforce court orders for support;

(4) provide that the State will—

(A) provide services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations, as appropriate, under the plan with respect to—

(i) each child for whom (I) assistance is provided under the State program funded under part A of this title, (II) benefits or services for foster care maintenance are provided under the State program funded under part E of this title, or (III) medical assistance is provided under the State plan approved under title XIX, unless, in accordance with paragraph (29), good cause or other exceptions exist;

(ii) any other child, if an individual applies for such services with respect to the child; and

(B) enforce any support obligation established with respect to—

(i) a child with respect to whom the State provides services under the plan; or
(ii) the custodial parent of such a child;

(5) provide that (A) in any case in which support payments are collected for an individual with respect to whom an assignment *under section 602(a)(26)* **pursuant to section 608(a)(3)** of this title is effective,

such payments shall be made to the State for distribution pursuant to section 657 of this title and shall not be paid directly to the family, and the individual will be notified on a monthly basis (or on a quarterly basis for so long as the Secretary determines with respect to a State that requiring such notice on a monthly basis would impose an unreasonable administrative burden) of the amount of the support payments collected; *except that this paragraph shall not apply to such payments for any month following the first month in which the amount collected is sufficient to make such family ineligible for assistance under the State plan approved under part A of this subchapter;*, and (B) in any case in which support payments are collected for an individual pursuant to the assignment made under section 1396k of this title, such payments shall be made to the State for distribution pursuant to section 1396k of this title, except that this clause shall not apply to such payments for any month after the month in which the individual ceases to be eligible for medical assistance;

(6) *provide that* **provide that—**

(A) the child support collection or paternity determination services established under the plan shall be made available to any individual not otherwise eligible for such services upon application filed by such individual with the State, including support collection services for the spouse (or former spouse) with whom the absent parent's child is living (but only if a support obligation has been established with respect to such spouse, and only if the support obligation established with respect to the child is being enforced under the plan),

(A) services under the plan shall be made available to residents of other States on the same

terms as to residents of the State submitting the plan;

(B) an application fee for furnishing such services shall be imposed **on individuals not receiving assistance under any State program funded under part A,** which shall be paid by the individual applying for such services, or recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and shall be considered income to the program), the amount of which (i) will not exceed $25 (or such higher or lower amount (which shall be uniform for all States) as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs), and (ii) may vary among such individuals on the basis of ability to pay (as determined by the State),;

(C) a fee of not more than $25 may be imposed in any case where the State requests the Secretary of the Treasury to withhold past-due support owed to or on behalf of such individual from a tax refund pursuant to section 664(a)(2) of this title,;

(D) a fee (in accordance with regulations of the Secretary) for performing genetic tests may be imposed on any individual who is not a recipient of *aid under a State plan approved* **assistance under a State program funded** under part A of this subchapter,; and

(E) any costs in excess of the fees so imposed may be collected—

(i) from the parent who owes the child or spousal support obligation involved, or

(ii) at the option of the State, from the individual to whom such services are made

available, but only if such State has in effect a procedure whereby all persons in such State having authority to order child or spousal support are informed that such costs are to be collected from the individual to whom such services were made available;

(7) provide for entering into cooperative arrangements with appropriate courts and law enforcement officials **and Indian tribes or tribal organizations (as defined in subsections (e) and (l) of section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b))**

(A) to assist the agency administering the plan, including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program, and

(B) with respect to any other matters of common concern to such courts or officials and the agency administering the plan;

(8) provide that the agency administering the plan will establish a service to locate *absent* **noncustodial** parents utilizing—

(A) all sources of information and available records, and

(B) the Parent Locator Service in the Department of Health and Human Services; **(B) the Federal Parent Locator Service established under section 653;**

(9) provide that the State will, in accordance with standards prescribed by the Secretary, cooperate with any other State—

(A) in establishing paternity, if necessary,

(B) in locating *an absent* **a noncustodial** parent residing in the State (whether or not

permanently) against whom any action is being taken under a program established under a plan approved under this part in another State,

(C) in securing compliance by *an absent* **a noncustodial** parent residing in such State (whether or not permanently) with an order issued by a court of competent jurisdiction against such parent for the support and maintenance of the child or children or the parent of such child or children with respect to whom aid is being provided under the plan of such other State, *and*

(D) in carrying out other functions required under a plan approved under this part; **and**

(E) not later than March 1, 1997, in using the forms promulgated pursuant to section 652 (a)(11) for income withholding, imposition of liens, and issuance of administrative subpoenas in interstate child support cases;

(10) provide that the State will maintain a full record of collections and disbursements made under the plan and have an adequate reporting system;

*(11)***(11)(A)** provide that amounts collected as support shall be distributed as provided in section 657 of this title; **and**

*(12)***(B)** provide that any payment required to be made under section 656 or 657 of this title to a family shall be made to the resident parent, legal guardian, or caretaker relative having custody of or responsibility for the child or children;

(12) provide for the establishment of procedures to require the State to provide individuals who are applying for or receiving services under the State plan, or who are parties to cases in which services are being provided under the State plan—

(A) with notice of all proceedings in which support obligations might be established or modified; and

(B) with a copy of any order establishing or modifying a child support obligation, or (in the case of a petition for modification) a notice of determination that there should be no change in the amount of the child support award, within 14 days after issuance of such order or determination;

(13) provide that the State will comply with such other requirements and standards as the Secretary determines to be necessary to the establishment of an effective program for locating *absent* **noncustodial** parents, establishing paternity, obtaining support orders, and collecting support payments **and provide that information requests by parents who are residents of other States be treated with the same priority as requests by parents who are residents of the State submitting the plan**;

*(14)***(14)(A)** comply with such bonding requirements, for employees who receive, disburse, handle, or have access to, cash, as the Secretary shall by regulations prescribe;

*(15)***(14)(B)** maintain methods of administration which are designed to assure that persons responsible for handling cash receipts shall not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of cash receipts (except that the Secretary shall by regulations provide for exceptions to this requirement in the case of sparsely populated areas where the hiring of unreasonable additional staff would otherwise be necessary);

(15) provide for—

(A) a process for annual reviews of and reports to the Secretary on the State program operated under the State plan approved under this part, including such information as may be necessary to measure State compliance with Federal requirements for expedited procedures, using such standards and procedures as are required by the Secretary, under which the State agency will determine the extent to which the program is operated in compliance with this part; and

(B) a process of extracting from the automated data processing system required by paragraph (16) and transmitting to the Secretary data and calculations concerning the levels of accomplishment (and rates of improvement) with respect to applicable performance indicators (including paternity establishment percentages) to the extent necessary for purposes of sections 652(g) and 658;

(16) provide, *at the option of the State,* for the establishment **and operation by the State agency**, in accordance with an (initial and annually updated) advance automated data processing planning document approved under section 652(d) of this title, of a statewide automated data processing and information retrieval system **meeting the requirements of section 654A** designed effectively and efficiently to assist management in the administration of the State plan, *in the State and localities thereof, so as*

(A) **so as** to control, account for, and monitor

(i) all the factors in the support enforcement collection and paternity determination process under such plan *(including, but not limited to, (I) identifiable correlation factors (such as social security numbers, names, dates of birth, home ad-*

dresses and mailing addresses (including postal ZIP codes) of any individual with respect to whom support obligations are sought to be established or enforced and with respect to any person to whom such support obligations are owing) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether such individual is paying or is obligated to pay support in more than one jurisdiction, (II) checking of records of such individuals on a periodic basis with Federal, intra and inter State, and local agencies, (III) maintaining the data necessary to meet the Federal reporting requirements on a timely basis, and (IV) delinquency and enforcement activities),

(ii) the collection and distribution of support payments (both intra and inter State), the determination, collection, and distribution of incentive payments both inter and intra State, and the maintenance of accounts receivable on all amounts owed, collected and distributed, and

(iii) the costs of all services rendered, either directly or by interfacing with State financial management and expenditure information,

(B) to provide interface with records of the State's aid to families with dependent children program in order to determine if a collection of a support payment causes a change affecting eligibility for or the amount of aid under such program,

(C) to provide for security against unauthorized access to, or use of, the data in such system,

(D) to facilitate the development and improvement of the income withholding and other procedures required under section 666(a) of this title through the monitoring of support payments, the maintenance of accurate records regarding the payment of support, and the prompt provision of notice to appropriate officials with respect to any arrearages in support payments which may occur, and

(E) to provide management information on all cases under the State plan from initial referral or application through collection and enforcement;;

(17) in the case of a State which has in effect an agreement with the Secretary entered into pursuant to section 663 of this title for the use of the Parent Locator Service established under section 653 of this title, provide that the State will accept and transmit to the Secretary requests for information authorized under the provisions of the agreement to be furnished by such Service to authorized persons, will impose and collect (in accordance with regulations of the Secretary) a fee sufficient to cover the costs to the State and to the Secretary incurred by reason of such requests, will transmit to the Secretary from time to time (in accordance with such regulations) so much of the fees collected as are attributable to such costs to the Secretary so incurred, and during the period that such agreement is in effect will otherwise comply with such agreement and regulations of the Secretary with respect thereto;

(18) provide that the State has in effect procedures necessary to obtain payment of past-due support from overpayments made to the Secretary of the Treasury as set forth in section 664 of this title, and take all steps necessary to implement and utilize such procedures;

(19) provide that the agency administering the plan—

(A) shall determine on a periodic basis, from information supplied pursuant to section 508 of the Unemployment Compensation Amendments of 1976, whether any individuals receiving compensation under the State's unemployment compensation law (including amounts payable pursuant to any agreement under any Federal unemployment compensation law) owe child support obligations which are being enforced by such agency, and

(B) shall enforce any such child support obligations which are owed by such an individual but are not being met—

(i) through an agreement with such individual to have specified amounts withheld from compensation otherwise payable to such individual and by submitting a copy of any such agreement to the State agency administering the unemployment compensation law, or

(ii) in the absence of such an agreement, by bringing legal process (as defined in section 662(e) of this title) to require the withholding of amounts from such compensation;

(20) provide, to the extent required by section 666 of this title, that the State (A) shall have in effect all of the laws to improve child support enforcement effectiveness which are referred to in that section, and (B) shall implement the procedures which are prescribed in or pursuant to such laws;

(21)(A) at the option of the State, impose a late payment fee on all overdue support (as defined in section 666(e) of this title) under any obligation being enforced under this part, in an amount equal to a uniform percentage determined by the State (not less than 3 percent nor more than 6 percent) of the overdue support, which shall be payable by the *absent* **noncustodial** parent owing the overdue support; and

(B) assure that the fee will be collected in addition to, and only after full payment of, the overdue support, and that the imposition of the late payment fee shall not directly or indirectly result in a decrease in the amount of the support which is paid to the child (or spouse) to whom, or on whose behalf, it is owed;

(22) in order for the State to be eligible to receive any incentive payments under section 658 of this title, provide that, if one or more political subdivisions of the State participate in the costs of carrying out activities under the State plan during any period, each such subdivision shall be entitled to receive an appropriate share (as determined by the State) of any such incentive payments made to the State for such period, taking into account the efficiency and effectiveness of the activities carried out under the State plan by such political subdivision;

(23) provide that the State will regularly and frequently publicize, through public service announcements, the availability of child support enforcement services under the plan and otherwise, including information as to any application fees for such services and a telephone number or postal address at which further information may be obtained **and will publicize the availability and encourage the use of procedures for voluntary establishment of paternity and child support by means the State deems appropriate;** *and*

(24) provide that if the State, as of October 13, 1988, does not have in effect an automated data

processing and information retrieval system meeting all of the requirements of paragraph (16), the State—

(A) will submit to the Secretary by October 1, 1991, for review and approval by the Secretary within 9 months after submittal an advance automated data processing planning document of the type referred to in such paragraph; and

(B) will have in effect by October 1, 1995, an operational automated data processing and information retrieval system, meeting all the requirements of that paragraph, which has been approved by the Secretary. and;

(24) provide that the State will have in effect an automated data processing and information retrieval system—

(A) by October 1, 1997, which meets all requirements of this part which were enacted on or before the date of enactment of the Family Support Act of 1988, and

(B) by October 1, 2000, which meets all requirements of this part enacted on or before the date of the enactment of the Personal Responsibility and Work Opportunity Act of 1996, except that such deadline shall be extended by 1 day for each day (if any) by which the Secretary fails to meet the deadline imposed by section 344(a)(3) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;

(25) provide that if a family with respect to which services are provided under the plan ceases to receive assistance under the State program funded under part A, the State shall provide appropriate notice to the family and continue to provide such services, subject to the same conditions and on the same basis as

in the case of other individuals to whom services are furnished under the plan, except that an application or other request to continue services shall not be required of such a family and paragraph (6)(B) shall not apply to the family;

(26) will have in effect safeguards, applicable to all confidential information handled by the State agency, that are designed to protect the privacy rights of the parties, including—

(A) safeguards against unauthorized use or disclosure of information relating to proceedings or actions to establish paternity, or to establish or enforce support;

(B) prohibitions against the release of information on the whereabouts of 1 party to another party against whom a protective order with respect to the former party has been entered; and

(C) prohibitions against the release of information on the whereabouts of 1 party to another party if the State has reason to believe that the release of the information may result in physical or emotional harm to the former party;

(27) provide that, on and after October 1, 1998, the State agency will—

(A) operate a State disbursement unit in accordance with section 654; and

(B) have sufficient State staff (consisting of State employees) and (at State option) contractors reporting directly to the State agency to—

(i) monitor and enforce support collections through the unit in cases being enforced by the State pursuant to section 654 (4) (including carrying out the automated data processing responsibilities described in section 654A(g)); and

(ii) take the actions described in section 666(c)(1) in appropriate cases;

(28) provide that, on and after October 1, 1997, the State will operate a State Directory of New Hires in accordance with section 653A;

(29) provide that the State agency responsible for administering the State plan—

(A) shall make the determination (and redetermination at appropriate intervals) as to whether an individual who has applied for or is receiving assistance under the State program funded under part A of this title or the State program under title XIX is cooperating in good faith with the State in establishing the paternity of, or in establishing, modifying, or enforcing a support order for, any child of the individual by providing the State agency with the name of, and such other information as the State agency may require with respect to, the noncustodial parent of the child, subject to good cause and other exceptions which—

(i) shall be defined, taking into account the best interests of the child, and

(ii) shall be applied in each case,

by, at the option of the State, the State agency administering the State program under part A, this part, or title XIX;

(B) shall require the individual to supply additional necessary information and appear at interviews, hearings, and legal proceedings;

(C) shall require the individual and the child to submit to genetic tests pursuant to judicial or administrative order;

(D) may request that the individual sign a voluntary acknowledgment of paternity, after

notice of the rights and consequences of such an acknowledgment, but may not require the individual to sign an acknowledgment or otherwise relinquish the right to genetic tests as a condition of cooperation and eligibility for assistance under the State program funded under part A, or the State program under title XIX; and

(E) shall promptly notify the individual, the State agency administering the State program funded under part A, and the State agency administering the State program under title XIX, of each such determination, and if noncooperation is determined, the basis therefor;

(30) provide that the State shall use the definitions established under section 652(a)(5) in collecting and reporting information as required under this part;

(31) provide that the State agency will have in effect a procedure for certifying to the Secretary, for purposes of the procedure under section 652(k), determinations that individuals owe arrearages of child support in an amount exceeding $5,000, under which procedure—

(A) each individual concerned is afforded notice of such determination and the consequences thereof, and an opportunity to contest the determination; and

(B) the certification by the State agency is furnished to the Secretary in such format, and accompanied by such supporting documentation, as the Secretary may require;

(32)(A) provide that any request for services under this part by a foreign reciprocating country or a foreign country with which the State has an arrangement described in section 659A(d)(2) shall be treated as a request by a State;

(B) provide, at State option, notwithstanding paragraph (4) or any other provision of this part, for services under the plan for enforcement of a spousal support order not described in paragraph (4)(B) entered by such a country (or subdivision); and

(C) provide that no applications will be required from, and no costs will be assessed for such services against, the foreign reciprocating country or foreign obligee (but costs may at State option be assessed against the obligor); and

(33) provide that a State that receives funding pursuant to section 628 and that has within its borders Indian country (as defined in section 1151 of title 18, United States Code) may enter into cooperative agreements with an Indian tribe or tribal organization (as defined in subsections (e) and (l) of section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)), if the Indian tribe or tribal organization demonstrates that such tribe or organization has an established tribal court system or a Court of Indian Offenses with the authority to establish paternity, establish, modify, and enforce support orders, and to enter support orders in accordance with child support guidelines established by such tribe or organization, under which the State and tribe or organization shall provide for the cooperative delivery of child support enforcement services in Indian country and for the forwarding of all funding collected pursuant to the functions performed by the tribe or organization to the State agency, or conversely, by the State agency to the tribe or organization, which shall distribute such funding in accordance with such agreement; and

Nothing in paragraph (33) shall void any provision of any cooperative agreement entered into before the date of the

enactment of such paragraph, nor shall such paragraph deprive any State of jurisdiction over Indian country (as so defined) that is lawfully exercised under section 402 of the Act entitled 'An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes', approved April 11, 1968 (25 U.S.C. 1322).

The State may allow the jurisdiction which makes the collection involved to retain any application fee under paragraph (6)(B) or any late payment fee under paragraph (21).

Sec. 654A. Automated data processing

(a) In general.—In order for a State to meet the requirements of this section, the State agency administering the State program under this part shall have in operation a single statewide automated data processing and information retrieval system which has the capability to perform the tasks specified in this section with the frequency and in the manner required by or under this part.

(b) Program management.—The automated system required by this section shall perform such functions as the Secretary may specify relating to management of the State program under this part, including—

(1) controlling and accounting for use of Federal, State, and local funds in carrying out the program; and

(2) maintaining the data necessary to meet Federal reporting requirements under this part on a timely basis.

(c) Calculation of performance indicators.—In order to enable the Secretary to determine the incentive payments and penalty adjustments required by sections 652(g) and 658, the State agency shall—

(1) use the automated system—

(A) to maintain the requisite data on State performance with respect to paternity establishment and child support enforcement in the State; and

(B) to calculate the paternity establishment percentage for the State for each fiscal year; and

(2) have in place systems controls to ensure the completeness and reliability of, and ready access to, the data described in paragraph (1)(A), and the accuracy of the calculations described in paragraph (1)(B).

(d) Information integrity and security.—The State agency shall have in effect safeguards on the integrity, accuracy, and completeness of, access to, and use of data in the automated system required by this section, which shall include the following (in addition to such other safeguards as the Secretary may specify in regulations):

(1) Policies restricting access.—Written policies concerning access to data by State agency personnel, and sharing of data with other persons, which—

(A) permit access to and use of data only to the extent necessary to carry out the State program under this part; and

(B) specify the data which may be used for particular program purposes, and the personnel permitted access to such data.

(2) Systems controls.—Systems controls (such as passwords or blocking of fields) to ensure strict adherence to the policies described in paragraph (1).

(3) Monitoring of access.—Routine monitoring of access to and use of the automated system, through methods such as audit trails and feedback mechanisms, to guard against and promptly identify unauthorized access or use.

(4) Training and information.—Procedures to ensure that all personnel (including State and local agency staff and contractors) who may have access to or be required to use confidential program data are informed of applicable requirements and penalties (including those in section 6103 of the Internal Revenue Code of 1986), and are adequately trained in security procedures.

(5) Penalties.—Administrative penalties (up to and including dismissal from employment) for unauthorized access to, or disclosure or use of, confidential data.

(e) State case registry.—

(1) Contents.—The automated system required by this section shall include a registry (which shall be known as the 'State case registry') that contains records with respect to—

(A) each case in which services are being provided by the State agency under the State plan approved under this part; and

(B) each support order established or modified in the State on or after October 1, 1998.

(2) Linking of local registries.—The State case registry may be established by linking local case registries of support orders through an automated information network, subject to this section.

(3) Use of standardized data elements.—Such records shall use standardized data elements for both parents (such as names, social security numbers and other uniform identification numbers, dates of birth, and case identification numbers), and contain such other information (such as on case status) as the Secretary may require.

(4) Payment records.—Each case record in the State case registry with respect to which services are

being provided under the State plan approved under this part and with respect to which a support order has been established shall include a record of—

(A) the amount of monthly (or other periodic) support owed under the order, and other amounts (including arrearages, interest or late payment penalties, and fees) due or overdue under the order;

(B) any amount described in subparagraph (A) that has been collected;

(C) the distribution of such collected amounts;

(D) the birth date of any child for whom the order requires the provision of support; and

(E) the amount of any lien imposed with respect to the order pursuant to section 666(a)(4).

(5) Updating and monitoring.—The State agency operating the automated system required by this section shall promptly establish and update, maintain, and regularly monitor, case records in the State case registry with respect to which services are being provided under the State plan approved under this part, on the basis of—

(A) information on administrative actions and administrative and judicial proceedings and orders relating to paternity and support;

(B) information obtained from comparison with Federal, State, or local sources of information;

(C) information on support collections and distributions; and

(D) any other relevant information.

(f) Information comparisons and other disclosures of information. The State shall use the automated system required by this section to extract information from (at such times, and in such standardized format or formats, as may

be required by the Secretary), to share and compare information with, and to receive information from, other data bases and information comparison services, in order to obtain (or provide) information necessary to enable the State agency (or the Secretary or other State or Federal agencies) to carry out this part, subject to section 6103 of the Internal Revenue Code of 1986. Such information comparison activities shall include the following:

(1) Federal Case Registry of Child Support Orders.—Furnishing to the Federal Case Registry of Child Support Orders established under section 653(h) (and update as necessary, with information including notice of expiration of orders) the minimum amount of information on child support cases recorded in the State case registry that is necessary to operate the registry (as specified by the Secretary in regulations).

(2) Federal Parent Locator Service.—Exchanging information with the Federal Parent Locator Service for the purposes specified in section 653.

(3) Temporary family assistance and medicaid agencies.—Exchanging information with State agencies (of the State and of other States) administering programs funded under part A, programs operated under a State plan approved under title XIX, and other programs designated by the Secretary, as necessary to perform State agency responsibilities under this part and under such programs.

(4) Intrastate and interstate information comparisons.—Exchanging information with other agencies of the State, agencies of other States, and interstate information networks, as necessary and appropriate to carry out (or assist other States to carry out) the purposes of this part.

(g) Collection and distribution of support payments.—

(1) In general.—The State shall use the automated system required by this section, to the maximum extent feasible, to assist and facilitate the collection and disbursement of support payments through the State disbursement unit operated under section 654B, through the performance of functions, including, at a minimum—

(A) transmission of orders and notices to employers (and other debtors) for the withholding of income—

(i) within 2 business days after receipt of notice of, and the income source subject to, such withholding from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State; and

(ii) using uniform formats prescribed by the Secretary;

(B) ongoing monitoring to promptly identify failures to make timely payment of support; and

(C) automatic use of enforcement procedures (including procedures authorized pursuant to section 666(c)) if payments are not timely made.

(2) Business day defined.—As used in paragraph (1), the term 'business day' means a day on which State offices are open for regular business.

(h) Expedited administrative procedures.—The automated system required by this section shall be used, to the maximum extent feasible, to implement the expedited administrative procedures required by section 666(c).

Sec. 654B. Collection and disbursement of support payments.

(a) State disbursement unit.—

(1) In general.—In order for a State to meet the requirements of this section, the State agency must establish and operate a unit (which shall be known as the 'State disbursement unit') for the collection and disbursement of payments under support orders—

(A) in all cases being enforced by the State pursuant to section 654(4); and

(B) in all cases not being enforced by the State under this part in which the support order is initially issued in the State on or after January 1, 1994, and in which the income of the noncustodial parent is subject to withholding pursuant to section 666(a)(8)(B).

(2) Operation.—The State disbursement unit shall be operated—

(A) directly by the State agency (or 2 or more State agencies under a regional cooperative agreement), or (to the extent appropriate) by a contractor responsible directly to the State agency; and

(B) except in cases described in paragraph (1)(B), in coordination with the automated system established by the State pursuant to section 654A.

(3) Linking of local disbursement units.—The State disbursement unit may be established by linking local disbursement units through an automated information network, subject to this section, if the Secretary agrees that the system will not cost more nor take more time to establish or operate than a centralized system. In addition, employers shall be given 1 location to which income withholding is sent.

(b) Required procedures.—The State disbursement unit shall use automated procedures, electronic processes, and computer-driven technology to the maximum extent feasible, efficient, and economical, for the collection and disbursement of support payments, including procedures—

(1) for receipt of payments from parents, employers, and other States, and for disbursements to custodial parents and other obligees, the State agency, and the agencies of other States;

(2) for accurate identification of payments;

(3) to ensure prompt disbursement of the custodial parent's share of any payment; and

(4) to furnish to any parent, upon request, timely information on the current status of support payments under an order requiring payments to be made by or to the parent, except that in cases described in subsection (a)(1)(B), the State disbursement unit shall not be required to convert and maintain in automated form records of payments kept pursuant to section 666(a)(8)(B)(iii) before the effective date of this section.

(c) Timing of disbursements.—

(1) In general.—Except as provided in paragraph (2), the State disbursement unit shall distribute all amounts payable under section 657(a) within 2 business days after receipt from the employer or other sources of periodic income, if sufficient information identifying the payee is provided.

(2) Permissive retention of arrearages.—The State disbursement unit may delay the distribution of collections toward arrearages until the resolution of any timely appeal with respect to such arrearages.

(d) Business day defined.—As used in this section, the term 'business day' means a day on which State offices are open for regular business.

Sec. 655. Payments to States

(a) Amounts payable each quarter

(1) From the sums appropriated therefor, the Secretary shall pay to each State for each quarter an amount—

(A) equal to the percent specified in paragraph (2) of the total amounts expended by such State during such quarter for the operation of the plan approved under section 654 of this title,

(B) equal to *90 percent* **the percent specified in paragraph (3)** (rather than the percent specified in subparagraph (A)) of *so much of* the sums expended during such quarter as are attributable to the planning, design, development, installation or enhancement of an automatic data processing and information retrieval system (including in such terms the full cost of the hardware components of such system) *which the Secretary finds meets the requirements specified in section 654(16) of this title, or meets such requirements without regard to clause (D) thereof, and,* **and**

(C) equal to 90 percent (rather than the percentage specified in subparagraph (A)) of so much of the sums expended during such quarter as are attributable to laboratory costs incurred in determining paternity;

except that no amount shall be paid to any State on account of amounts expended to carry out an agreement which it has entered into pursuant to section 663 of this title. In determining the total amounts expended by any State during a quarter, for purposes of this subsection, there shall be excluded an amount equal to the total of any

fees collected or other income resulting from services provided under the plan approved under this part.

(2) The percent applicable to quarters in a fiscal year for purposes of paragraph (1)(A) is—

(A) 70 percent for fiscal years 1984, 1985, 1986, and 1987,

(B) 68 percent for fiscal years 1988 and 1989, and

(C) 66 percent for fiscal year 1990 and each fiscal year thereafter.

(3)(A) The Secretary shall pay to each State, for each quarter in fiscal years 1996 and 1997, 90 percent of so much of the State expenditures described in paragraph (1)(B) as the Secretary finds are for a system meeting the requirements specified in section 654(16) (as in effect on September 30, 1995) but limited to the amount approved for States in the advance planning documents of such States submitted on or before September 30, 1995.

(B)(i) The Secretary shall pay to each State, for each quarter in fiscal years 1996 through 2001, the percentage specified in clause (ii) of so much of the State expenditures described in paragraph (1)(B) as the Secretary finds are for a system meeting the requirements of sections 654(16) and 654A.

(ii) The percentage specified in this clause is 80 percent.

(b) Estimate of amounts payable; installment payments

(1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsection (a) of this section for such quarter, such estimates to be based on (A)

a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

(2) Subject to subsection (d) of this section, the Secretary shall then pay, in such installments as he may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

(c) Repealed. Pub. L. 97-248, title I, Sec. 174(b), Sept. 3, 1982, 96 Stat. 403

(d) State reports

Notwithstanding any other provision of law, no amount shall be paid to any State under this section for any quarter, prior to the close of such quarter, unless for the period consisting of all prior quarters for which payment is authorized to be made to such State under subsection (a) of this section, there shall have been submitted by the State to the Secretary, with respect to each quarter in such period (other than the last two quarters in such period), a full and complete report (in such form and

manner and containing such information as the Secretary shall prescribe or require) as to the amount of child support collected and disbursed and all expenditures with respect to which payment is authorized under subsection (a) of this section.

(e) Special project grants for interstate enforcement; appropriations

(1) In order to encourage and promote the development and use of more effective methods of enforcing support obligations under this part in cases where either the children on whose behalf the support is sought or their *absent* **noncustodial** parents do not reside in the State where such cases are filed, the Secretary is authorized to make grants, in such amounts and on such terms and conditions as the Secretary determines to be appropriate, to States which propose to undertake new or innovative methods of support collection in such cases and which will use the proceeds of such grants to carry out special projects designed to demonstrate and test such methods.

(2) A grant under this subsection shall be made only upon a finding by the Secretary that the project involved is likely to be of significant assistance in carrying out the purpose of this subsection; and with respect to such project the Secretary may waive any of the requirements of this part which would otherwise be applicable, to such extent and for such period as the Secretary determines is necessary or desirable in order to enable the State to carry out the project.

(3) At the time of its application for a grant under this subsection the State shall submit to the Secretary a statement describing in reasonable detail the project for which the proceeds of the grant are to be used, and the State shall from time to time thereafter submit to the Secretary such reports with respect to the project as the Secretary may specify.

(4) Amounts expended by a State in carrying out a special project assisted under this section shall be considered, for purposes of section 658(b) of this title (as amended by section 5(a) of the Child Support Enforcement Amendments of 1984), to have been expended for the operation of the State's plan approved under section 654 of this title.

(5) There is authorized to be appropriated the sum of $7,000,000 for fiscal year 1985, $12,000,000 for fiscal year 1986, and $15,000,000 for each fiscal year thereafter, to be used by the Secretary in making grants under this subsection.

([f])(b) The Secretary may, in appropriate cases, make direct payments under this part to an Indian tribe or tribal organization which has an approved child support enforcement plan under this title. In determining whether such payments are appropriate, the Secretary shall, at a minimum, consider whether services are being provided to eligible Indian recipients by the State agency through an agreement entered into pursuant to section 654(34).

Sec. 656. Support obligation as obligation to State; amount; discharge in bankruptcy

(a)(1) The support rights assigned to the State under section 602(a)(26) of this title or secured on behalf of a child receiving foster care maintenance payments shall constitute an obligation owed to such State by the individual responsible for providing such support. Such obligation shall be deemed for collection purposes to be collectible under all applicable State and local processes.

(2) The amount of such obligation shall be—

(A) the amount specified in a court order which covers the assigned support rights, or

(B) if there is no court order, an amount determined by the State in accordance with a formula approved by the Secretary, and

(3) Any amounts collected from *an absent* **a noncustodial** parent under the plan shall reduce, dollar for dollar, the amount of his obligation under subparagraphs (A) and (B) of paragraph (2).

(b) A debt which is a child support obligation assigned to a State under section 602(a)(26) of this title is not released by a discharge in bankruptcy under title 11.

(b) Nondischargeability.—A debt (as defined in section 101 of title 11 of the United States Code) owed under State law to a State (as defined in such section) or municipality (as defined in such section) that is in the nature of support and that is enforceable under this part is not released by a discharge in bankruptcy under title 11 of the United States Code.

Sec. 657. Distribution of proceeds

(a) Amount collected during fifteen month period beginning July 1, 1975

The amounts collected as child support by a State pursuant to a plan approved under this part during the 15 months beginning July 1, 1975, shall be distributed as follows:

(1) 40 per centum of the first $50 of such amounts as are collected periodically which represent monthly support payments shall be paid to the family without any decrease in the amount paid as assistance to such family during such month;

(2) such amounts as are collected periodically which are in excess of any amount paid to the family under paragraph (1) which represent monthly support payments shall be retained by the State to reimburse it for assistance payments to the family during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

(3) such amounts as are in excess of amounts retained by the State under paragraph (2) and are not in excess of the amount required to be paid during such period to the family by a court order shall be paid to the family; and

(4) such amounts as are in excess of amounts required to be distributed under paragraphs (1), (2), and (3) shall be (A) retained by the State (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing) as reimbursement for any past assistance payments made to the family for which the State has not been reimbursed or (B) if no assistance payments have been made by the State which have not been repaid, such amounts shall be paid to the family.

(b) Amount collected during any fiscal year beginning after September 30, 1976

The amounts collected as support by a State pursuant to a plan approved under this part during any fiscal year beginning after September 30, 1976, shall (subject to subsection (d) of this section) be distributed as follows:

(1) of such amounts as are collected periodically which represent monthly support payments, the first $50 of any payments for a month received in that month, and the first $50 of payments for each prior month received in that month which were made by the absent parent in the month when due, shall be paid to the family without affecting its eligibility for assistance or decreasing any amount otherwise payable as assistance to such family during such month;

(2) such amounts as are collected periodically which are in excess of any amount paid to the family under paragraph (1) and which represent monthly support payments shall be retained by the State to reimburse it for assistance payments to the family during such period (with appropriate reimbursement

of the Federal Government to the extent of its participation in the financing);

(3) such amounts as are in excess of amounts retained by the State under paragraph (2) and are not in excess of the amount required to be paid during such period to the family by a court or administrative order shall be paid to the family; and

(4) such amounts as are in excess of amounts required to be distributed under paragraphs (1), (2), and (3) shall be (A) retained by the State (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing) as reimbursement for any past assistance payments made to the family for which the State has not been reimbursed or (B) if no assistance payments have been made by the State which have not been repaid, such amounts shall be paid to the family.

(c) Collection after termination of assistance; distribution of support proceeds

Whenever a family with respect to which child support enforcement services have been provided pursuant to section 654(4) of this title ceases to receive assistance under part A of this subchapter, the State shall provide appropriate notice to the family and continue to provide such services, and pay any amount of support collected, subject to the same conditions and on the same basis as in the case of the individuals to whom services are furnished pursuant to section 654(6) of this title, except that no application or other request to continue services shall be required of a family to which this subsection applies, and the provisions of section 654(6)(B) of this title may not be applied.

(d) Disposition of amounts collected by State as child support on behalf of children for whom public agencies make foster care payments

Notwithstanding the preceding provisions of this section, amounts collected by a State as child support for

months in any period on behalf of a child for whom a public agency is making foster care maintenance payments under part E of this subchapter

(1) shall be retained by the State to the extent necessary to reimburse it for the foster care maintenance payments made with respect to the child during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

(2) shall be paid to the public agency responsible for supervising the placement of the child to the extent that the amounts collected exceed the foster care maintenance payments made with respect to the child during such period but not the amounts required by a court or administrative order to be paid as support on behalf of the child during such period; and the responsible agency may use the payments in the manner it determines will serve the best interests of the child, including setting such payments aside for the child's future needs or making all or a part thereof available to the person responsible for meeting the child's day to day needs; and

(3) shall be retained by the State, if any portion of the amounts collected remains after making the payments required under paragraphs (1) and (2), to the extent that such portion is necessary to reimburse the State (with appropriate reimbursement to the Federal Government to the extent of its participation in the financing) for any past foster care maintenance payments (or payments of aid to families with dependent children) which were made with respect to the child (and with respect to which past collections have not previously been retained);

and any balance shall be paid to the State agency responsible for supervising the placement of the child, for use by such agency in accordance with paragraph (2).

Sec. 657. Distribution of collected support

(a) In general.—Subject to subsection (e), an amount collected on behalf of a family as support by a State pursuant to a plan approved under this part shall be distributed as follows:

(1) Families receiving assistance.—In the case of a family receiving assistance from the State, the State shall—

(A) pay to the Federal Government the Federal share of the amount so collected; and

(B) retain, or distribute to the family, the State share of the amount so collected.

(2) Families that formerly received assistance.—In the case of a family that formerly received assistance from the State:

(A) Current support payments.—To the extent that the amount so collected does not exceed the amount required to be paid to the family for the month in which collected, the State shall distribute the amount so collected to the family.

(B) Payments of arrearages.—To the extent that the amount so collected exceeds the amount required to be paid to the family for the month in which collected, the State shall distribute the amount so collected as follows:

(i) Distribution of arrearages that accrued after the family ceased to receive assistance.—

(I) Pre-October 1997.—Except as provided in subclause (II), the provisions of this section (other than subsection (b)(1)) as in effect and applied on the day before the date of the

enactment of section 302 of the Personal Responsibility and Work Opportunity Act Reconciliation of 1996 shall apply with respect to the distribution of support arrearages that—

(aa) accrued after the family ceased to receive assistance, and

(bb) are collected before October 1, 1997.

(II) Post-September 1997.—With respect to the amount so collected on or after October 1, 1997 (or before such date, at the option of the State)—

(aa) In general.—The State shall first distribute the amount so collected (other than any amount described in clause (iv)) to the family to the extent necessary to satisfy any support arrearages with respect to the family that accrued after the family ceased to receive assistance from the State.

(bb) Reimbursement of governments for assistance provided to the family.—After the application of division (aa) and clause (ii)(II)(aa) with respect to the amount so collected, the State shall retain the State share of the amount so collected, and pay to the Federal Government the Federal share (as defined in subsection (c)(2)) of the amount so collected, but only to the extent nec-

essary to reimburse amounts paid to the family as assistance by the State.

(cc) Distribution of the remainder to the family.—To the extent that neither division (aa) nor division (bb) applies to the amount so collected, the State shall distribute the amount to the family.

(ii) Distribution of arrearages that accrued before the family received assistance.—

(I) Pre-October 2000.—Except as provided in subclause (II), the provisions of this section (other than subsection (b)(1)) as in effect and applied on the day before the date of the enactment of section 302 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 shall apply with respect to the distribution of support arrearages that—

(aa) accrued before the family received assistance, and

(bb) are collected before October 1, 2000.

(II) Post-September 2000.—Unless, based on the report required by paragraph (4), the Congress determines otherwise, with respect to the amount so collected on or after October 1, 2000 (or before such date, at the option of the State)—

(aa) In general.—The State shall first distribute the amount

so collected (other than any amount described in clause (iv)) to the family to the extent necessary to satisfy any support arrearages with respect to the family that accrued before the family received assistance from the State.

(bb) Reimbursement of governments for assistance provided to the family.—After the application of clause (i)(II)(aa) and division (aa) with respect to the amount so collected, the State shall retain the State share of the amount so collected, and pay to the Federal Government the Federal share (as defined in subsection (c)(2)) of the amount so collected, but only to the extent necessary to reimburse amounts paid to the family as assistance by the State.

(cc) Distribution of the remainder to the family.—To the extent that neither division (aa) nor division (bb) applies to the amount so collected, the State shall distribute the amount to the family.

(iii) Distribution of arrearages that accrued while the family received assistance.—In the case of a family described in this subparagraph, the provisions of paragraph (1) shall apply with respect to the distribution of support arrearages that accrued while the family received assistance.

(iv) Amounts collected pursuant to section 664. —Notwithstanding any other provision of this section, any amount of support collected pursuant to section 664 shall be retained by the State to the extent past-due support has been assigned to the State as a condition of receiving assistance from the State, up to the amount necessary to reimburse the State for amounts paid to the family as assistance by the State. The State shall pay to the Federal Government the Federal share of the amounts so retained. To the extent the amount collected pursuant to section 664 exceeds the amount so retained, the State shall distribute the excess to the family.

(v) Ordering rules for distributions.—For purposes of this subparagraph, unless an earlier effective date is required by this section, effective October 1, 2000, the State shall treat any support arrearages collected, except for amounts collected pursuant to section 664, as accruing in the following order:

(I) To the period after the family ceased to receive assistance.

(II) To the period before the family received assistance.

(III) To the period while the family was receiving assistance.

(3) Families that never received assistance.—In the case of any other family, the State shall distribute the amount so collected to the family.

(4) Families under certain agreements.—In the case of a family receiving assistance from an Indian tribe, distribute the amount so collected pursuant to

an agreement entered into pursuant to a State plan under section 654(33).

(5) Study and report.—Not later than October 1, 1998, the Secretary shall report to the Congress the Secretary's findings with respect to—

(A) whether the distribution of post-assistance arrearages to families has been effective in moving people off of welfare and keeping them off of welfare;

(B) whether early implementation of a pre-assistance arrearage program by some States has been effective in moving people off of welfare and keeping them off of welfare;

(C) what the overall impact has been of the amendments made by the Personal Responsibility and Work Opportunity Act of 1996 with respect to child support enforcement in moving people off of welfare and keeping them off of welfare; and

(D) based on the information and data the Secretary has obtained, what changes, if any, should be made in the policies related to the distribution of child support arrearages.

(b) Continuation of assignments.—Any rights to support obligations, which were assigned to a State as a condition of receiving assistance from the State under part A and which were in effect on the day before the date of the enactment of the Personal Responsibility and Work Opportunity Act of 1996, shall remain assigned after such date.

(c) Definitions.—As used in subsection (a):

(1) Assistance.—The term 'assistance from the State' means—

(A) assistance under the State program funded under part A or under the State plan

approved under part A of this title (as in effect on the day before the date of the enactment of the Personal Responsibility and Work Opportunity Act of 1996); and

(B) foster care maintenance payments under the State plan approved under part E of this title.

(2) Federal share.—The term 'Federal share' means that portion of the amount collected resulting from the application of the Federal medical assistance percentage in effect for the fiscal year in which the amount is collected.

(3) Federal medical assistance percentage.—The term 'Federal medical assistance percentage' means—

(A) the Federal medical assistance percentage (as defined in section 1118), in the case of Puerto Rico, the Virgin Islands, Guam, and American Samoa; or

(B) the Federal medical assistance percentage (as defined in section 1905(b), as in effect on September 30, 1996) in the case of any other State.

(4) State share.—The term 'State share' means 100 percent minus the Federal share.

(d) Hold harmless provision.—If the amounts collected which could be retained by the State in the fiscal year (to the extent necessary to reimburse the State for amounts paid to families as assistance by the State) are less than the State share of the amounts collected in fiscal year 1995 (determined in accordance with section 657 as in effect on the day before the date of the enactment of the Personal Responsibility and Work Opportunity Act of 1996), the State share for the fiscal year shall be an amount equal to the State share in fiscal year 1995.

(e) Gap payments not subject to distribution under this section.—At State option, this section shall not

apply to any amount collected on behalf of a family as support by the State (and paid to the family in addition to the amount of assistance otherwise payable to the family) pursuant to a plan approved under this part if such amount would have been paid to the family by the State under section 602(a)(28), as in effect and applied on the day before the date of the enactment of section 302 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. For purposes of subsection (d), the State share of such amount paid to the family shall be considered amounts which could be retained by the State if such payments were reported by the State as part of the State share of amounts collected in fiscal year 1995.

Sec. 658. Incentive payments to States

(a) Purpose; requirement; quarterly payments

In order to encourage and reward State child support enforcement programs which perform in a cost-effective and efficient manner to secure support for all children who have sought assistance in securing support, whether such children reside within the State or elsewhere and whether or not they are eligible for *aid to families with dependent children under a State plan approved under part A of this subchapter* **assistance under a program funded under part A**, and regardless of the economic circumstances of their parents, the Secretary shall, from support collected which would otherwise represent the Federal share of assistance to families of *absent* **noncustodial** parents, pay to each state for each fiscal year, on a quarterly basis (as described in subsection (e) of this section) beginning with the quarter commencing October 1, 1985, an incentive payment in an amount determined under subsection (b) of this section.

(b) Incentive formula

(1) Except as provided in paragraphs (2), (3), and (4), the incentive payment shall be equal to—

(A) 6 percent of the total amount of support collected under the plan during the fiscal year in cases in which the support obligation involved is assigned to the State pursuant to section *602(a)(26)* **608(a)(3)** or section 671(a)(17) of this title (and such total amount for any fiscal year being hereafter referred to in this section as the State's "*AFDC collections* **title IV-A collections**" for that year), plus

(B) 6 percent of the total amount of support collected during the fiscal year in all other cases under this part (with such total amount for any fiscal year being hereafter referred to in this section as the State's "*non/AFDC collections* **non-title IV-A collections**" for that year).

(2) If subsection (c) of this section applies with respect to a State's *AFDC collections* **title IV-A coltions** or *non-AFDC collections* **non-title IV-A collections** for any fiscal year, the percent specified in paragraph (1)(A) or (B) (with respect to such collections) shall be increased to the higher percent determined under such subsection (with respect to such collections) in determining the State's incentive payment under this subsection for that year.

(3) The dollar amount of the portion of the State's incentive payment for any fiscal year which is determined on the basis of its *non/AFDC collections* **non-title IV-A collections** under paragraph (1)(B) (after adjustment under subsection (c) of this section if applicable) shall in no case exceed—

(A) the dollar amount of the portion of such payment which is determined on the basis of its *AFDC collections* **title IV-A collections** under paragraph (1)(A) (after adjustment under subsection (c) of this section if applicable) in the case of fiscal year 1986 or 1987;

(B) 105 percent of such dollar amount in the case of fiscal year 1988;

(C) 110 percent of such dollar amount in the case of fiscal year 1989; or

(D) 115 percent of such dollar amount in the case of fiscal year 1990 or any fiscal year thereafter.

(4) The Secretary shall make such additional payments to the State under this part, for fiscal year 1986 or 1987, as may be necessary to assure that the total amount of payments under this section and section 655(a)(1)(A) of this title for such fiscal year is no less than 80 percent of the amount that would have been payable to that State and its political subdivisions for such fiscal year under this section and section 655(a)(1)(A) of this title if those sections (including the amendment made by section 5(c)(2)(A) of the Child Support Enforcement Amendments of 1984) had remained in effect as they were in effect for fiscal year 1985.

(c) Increase in percentage; laboratory costs

If the total amount of a State's *AFDC collections* **title IV-A collections** or *non/AFDC collections* **non-title IV-A collections** for any fiscal year bears a ratio to the total amount expended by the State in that year for the operation of its plan approved under section 654 of this title for which payment may be made under section 655 of this title (with the total amount so expended in any fiscal year being hereafter referred to in this section as the State's "*combined AFDC/non/AFDC administrative costs* **combined title IV-A/non-title IV-A administrative costs**" for that year) which is equal to or greater than 1.4, the relevant percent specified in subparagraph (A) or (B) of this subsection (b)(1) of this section (with respect to such collections) shall be increased to—

(1) 6.5 percent, plus

(2) one-half of 1 percent for each full two-tenths by which such ratio exceeds 1.4;

except that the percent so specified shall in no event be increased, for either *AFDC collections* **title IV-A collections** or *non/AFDC collections* **non-title IV-A collections**) to more than 10 percent. For purposes of the preceding sentence, laboratory costs incurred in determining paternity in any fiscal year may at the option of the State be excluded from the State's *combined AFDC/non/AFDC administrative costs* **combined title IV-A/non-title IV-A administrative costs** for that year.

(d) Support collected on behalf of individuals residing in another State

In computing incentive payments under this section, support which is collected by one State at the request of another State shall be treated as having been collected in full by each such State, and any amounts expended by the State in carrying out a special project assisted under section 655(e) of this title shall be excluded.

(e) Estimates by Secretary; quarterly payments

The amounts of the incentive payments to be made to the various States under this section for any fiscal year shall be estimated by the Secretary at or before the beginning of such year on the basis of the best information available. The Secretary shall make such payments for such year, on a quarterly basis (with each quarterly payment being made no later than the beginning of the quarter involved), in the amounts so estimated, reduced or increased to the extent of any overpayments or underpayments which the Secretary determines were made under this section to the States involved for prior periods and with respect to which adjustment has not already been made under this subsection. Upon the making of any estimate by the Secretary under the preceding sentence, any appropriations available for payments under this section shall be deemed obligated.

Sec. 659. Enforcement of individual's legal obligations to provide child support or make alimony payments

(a) United States and District of Columbia to be subject to legal process

Notwithstanding any other provision of law (including section 407 of this title), effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, subdivision, or instrumentality thereof) to any individual, including members of the armed services, shall be subject, in like manner and to the same extent as if the United States or the District of Columbia were a private person, to legal process brought for the enforcement, against such individual of his legal obligations to provide child support or make alimony payments.

(b) Methods of service of legal process

Service of legal process brought for the enforcement of an individual's obligation to provide child support or make alimony payments shall be accomplished by certified or registered mail, return receipt requested, or by personal service, upon the appropriate agent designated for receipt of such service of process pursuant to regulations promulgated pursuant to section 661 of this title (or, if no agent has been designated for the governmental entity having payment responsibility for the moneys involved, then upon the head of such governmental entity). Such process shall be accompanied by sufficient data to permit prompt identification of the individual and the moneys involved.

(c) Disclosure of information in answering interrogatories; disciplinary action or civil or criminal liability or penalty prohibited

No Federal employee whose duties include responding to interrogatories pursuant to requirements imposed by section 661(b)(3) of this title shall be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or on account of, any dislosure of information made by him in connection with the carrying out of any of his duties which pertain (directly or indirectly) to the answering of any such interrogatory.

(d) Notice

Whenever any person, who is designated by law or regulation to accept service of process to which the United States is subject under this section, is effectively served with any such process or with interrogatories relating to an individual's child support or alimony payment obligations, such person shall respond thereto within thirty days (or within such longer period as may be prescribed by applicable State law) after the date effective service thereof is made, and shall, as soon as possible but not later than fifteen days after the date effective service is so made of any such process, send written notice that such process has been so served (together with a copy thereof) to the individual whose moneys are affected thereby at his duty station or last known home address.

(e) Variance in normal pay and disbursement cycles not required

Governmental entities affected by legal processes served for the enforcement of an individual's child support or alimony payment obligations shall not be required to vary their normal pay and disbursement cycles in order to comply with any such legal process.

(f) Non-liability of United States, disbursing officers, and governmental entities with respect to payments

Neither the United States, any disbursing officer, nor governmental entity shall be liable with respect to any payment made from moneys due or payable from the

United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this section and the regulations issued to carry out this section.

Sec. 659. Consent by the United States to income withholding, garnishment, and similar proceedings for enforcement of child support and alimony obligations

(a) Consent to support enforcement.—Notwithstanding any other provision of law (including section 207 of this Act and section 5301 of title 38, United States Code), effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, subdivision, or instrumentality thereof) to any individual, including members of the Armed Forces of the United States, shall be subject, in like manner and to the same extent as if the United States or the District of Columbia were a private person, to withholding in accordance with State law enacted pursuant to subsections (a)(1) and (b) of section 666 and regulations of the Secretary under such subsections, and to any other legal process brought, by a State agency administering a program under a State plan approved under this part or by an individual obligee, to enforce the legal obligation of the individual to provide child support or alimony.

(b) Consent to requirements applicable to private person.—With respect to notice to withhold income pursuant to subsection (a)(1) or (b) of section 666, or any other order or process to enforce support obligations against an individual (if the order or process contains or is accompanied by sufficient data to permit prompt identification of the individual and the moneys involved), each governmental entity specified in subsection (a) shall be subject to the same requirements as would apply if the

entity were a private person, except as otherwise provided in this section.

(c) Designation of agent; response to notice or process—

(1) Designation of agent.—The head of each agency subject to this section shall—

(A) designate an agent or agents to receive orders and accept service of process in matters relating to child support or alimony; and

(B) annually publish in the Federal Register the designation of the agent or agents, identified by title or position, mailing address, and telephone number.

(2) Response to notice or process.—If an agent designated pursuant to paragraph (1) of this subsection receives notice pursuant to State procedures in effect pursuant to subsection (a)(1) or (b) of section 666, or is effectively served with any order, process, or interrogatory, with respect to an individual's child support or alimony payment obligations, the agent shall—

(A) as soon as possible (but not later than 15 days) thereafter, send written notice of the notice or service (together with a copy of the notice or service) to the individual at the duty station or last-known home address of the individual;

(B) within 30 days (or such longer period as may be prescribed by applicable State law) after receipt of a notice pursuant to such State procedures, comply with all applicable provisions of section 666; and

(C) within 30 days (or such longer period as may be prescribed by applicable State law) after effective service of any other such order, process, or interrogatory, respond to the order, process, or interrogatory.

(d) Priority of claims.—If a governmental entity specified in subsection (a) receives notice or is served with process, as provided in this section, concerning amounts owed by an individual to more than 1 person—

(1) support collection under section 666(b) must be given priority over any other process, as provided in section 666(b)(7);

(2) allocation of moneys due or payable to an individual among claimants under section 666(b) shall be governed by section 666(b) and the regulations prescribed under such section; and

(3) such moneys as remain after compliance with paragraphs (1) and (2) shall be available to satisfy any other such processes on a first-come, first-served basis, with any such process being satisfied out of such moneys as remain after the satisfaction of all such processes which have been previously served.

(e) No requirement to vary pay cycles.—A governmental entity that is affected by legal process served for the enforcement of an individual's child support or alimony payment obligations shall not be required to vary its normal pay and disbursement cycle in order to comply with the legal process.

(f) Relief from liability.—

(1) Neither the United States, nor the government of the District of Columbia, nor any disbursing officer shall be liable with respect to any payment made from moneys due or payable from the United States to any individual pursuant to legal process regular on its face, if the payment is made in accordance with this section and the regulations issued to carry out this section.

(2) No Federal employee whose duties include taking actions necessary to comply with the requirements of subsection (a) with regard to any individual shall be subject under any law to any disciplinary action

or civil or criminal liability or penalty for, or on account of, any disclosure of information made by the employee in connection with the carrying out of such actions.

(g) Regulations.—Authority to promulgate regulations for the implementation of this section shall, insofar as this section applies to moneys due from (or payable by)—

(1) the United States (other than the legislative or judicial branches of the Federal Government) or the government of the District of Columbia, be vested in the President (or the designee of the President);

(2) the legislative branch of the Federal Government, be vested jointly in the President pro tempore of the Senate and the Speaker of the House of Representatives (or their designees), and

(3) the judicial branch of the Federal Government, be vested in the Chief Justice of the United States (or the designee of the Chief Justice).

(h) Moneys subject to process.—

(1) In general.—Subject to paragraph (2), moneys paid or payable to an individual which are considered to be based upon remuneration for employment, for purposes of this section—

(A) consist of—

(i) compensation paid or payable for personal services of the individual, whether the compensation is denominated as wages, salary, commission, bonus, pay, allowances, or otherwise (including severance pay, sick pay, and incentive pay);

(ii) periodic benefits (including a periodic benefit in section 228(h)(3)) or other payments—

(I) under the insurance system established by title II;

(II) under any other system or fund established by the United States which provides for the payment of pensions, retirement or retired pay, annuities, dependents' or survivors' benefits, or similar amounts payable on account of personal services performed by the individual or any other individual;

(III) as compensation for death under any Federal program;

(IV) under any Federal program established to provide 'black lung' benefits; or

(V) by the Secretary of Veterans Affairs as compensation for a service-connected disability paid by the Secretary to a former member of the Armed Forces who is in receipt of retired or retainer pay if the former member has waived a portion of the retired or retainer pay in order to receive such compensation; and

(iii) worker's compensation benefit paid under Federal or State law but

(B) do not include any payment—

(i) by way of reimbursement or otherwise, to defray expenses incurred by the individual in carrying out duties associated with the employment of the individual; or

(ii) as allowances for members of the uniformed services payable pursuant to chapter 7 of title 37, United States Code, as prescribed by the Secretaries concerned (defined by section 101(5) of such title) as necessary for the efficient performance of duty.

(2) Certain amounts excluded.—In determining the amount of any moneys due from, or payable by, the United States to any individual, there shall be excluded amounts which—

(A) are owed by the individual to the United States;

(B) are required by law to be, and are, deducted from the remuneration or other payment involved, including Federal employment taxes, and fines and forfeitures ordered by court-martial;

(C) are properly withheld for Federal, State, or local income tax purposes, if the withholding of the amounts is authorized or required by law and if amounts withheld are not greater than would be the case if the individual claimed all dependents to which he was entitled (the withholding of additional amounts pursuant to section 3402(i) of the Internal Revenue Code of 1986 may be permitted only when the individual presents evidence of a tax obligation which supports the additional withholding);

(D) are deducted as health insurance premiums;

(E) are deducted as normal retirement contributions (not including amounts deducted for supplementary coverage); or

(F) are deducted as normal life insurance premiums from salary or other remuneration for employment (not including amounts deducted for supplementary coverage).

(i) Definitions.—For purposes of this section—

(1) United States.—The term 'United States' includes any department, agency, or instrumentality of the legislative, judicial, or executive branch of the Federal Government, the United States Postal Service,

the Postal Rate Commission, any Federal corporation created by an Act of Congress that is wholly owned by the Federal Government, and the governments of the territories and possessions of the United States.

(2) Child support.—The term 'child support', when used in reference to the legal obligations of an individual to provide such support, means amounts required to be paid under a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing State, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages or reimbursement, and which may include other related costs and fees, interest and penalties, income withholding, attorney's fees, and other relief.

(3) Alimony.—

(A) In general.—The term 'alimony', when used in reference to the legal obligations of an individual to provide the same, means periodic payments of funds for the support and maintenance of the spouse (or former spouse) of the individual, and (subject to and in accordance with State law) includes separate maintenance, alimony pendente lite, maintenance, and spousal support, and includes attorney's fees, interest, and court costs when and to the extent that the same are expressly made recoverable as such pursuant to a decree, order, or judgment issued in accordance with applicable State law by a court of competent jurisdiction.

(B) Exceptions.—Such term does not include—

(i) any child support; or

(ii) any payment or transfer of property or its value by an individual to the spouse or a former spouse of the individual in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses.

(4) Private person.—The term 'private person' means a person who does not have sovereign or other special immunity or privilege which causes the person not to be subject to legal process.

(5) Legal process.—The term 'legal process' means any writ, order, summons, or other similar process in the nature of garnishment—

(A) which is issued by—

(i) a court or an administrative agency of competent jurisdiction in any State, territory, or possession of the United States;

(ii) a court or an administrative agency of competent jurisdiction in any foreign country with which the United States has entered into an agreement which requires the United States to honor the process; or

(iii) an authorized official pursuant to an order of such a court or an administrative agency of competent jurisdiction or pursuant to State or local law; and

(B) which is directed to, and the purpose of which is to compel, a governmental entity which holds moneys which are otherwise payable to an individual to make a payment from the moneys to another party in order to satisfy a legal obligation of the individual to provide child support or make alimony payments.

Sec. 659A. International support enforcement

(a) Authority for declarations.—

(1) Declaration.—The Secretary of State, with the concurrence of the Secretary of Health and Human Services, is authorized to declare any foreign country (or a political subdivision thereof) to be a foreign reciprocating country if the foreign country has established, or undertakes to establish, procedures for the establishment and enforcement of duties of support owed to obligees who are residents of the United States, and such procedures are substantially in conformity with the standards prescribed under subsection (b).

(2) Revocation.—A declaration with respect to a foreign country made pursuant to paragraph (1) may be revoked if the Secretaries of State and Health and Human Services determine that—

(A) the procedures established by the foreign country regarding the establishment and enforcement of duties of support have been so changed, or the foreign country's implementation of such procedures is so unsatisfactory, that such procedures do not meet the criteria for such a declaration; or

(B) continued operation of the declaration is not consistent with the purposes of this part.

(3) Form of declaration.—A declaration under paragraph (1) may be made in the form of an international agreement, in connection with an international agreement or corresponding foreign declaration, or on a unilateral basis.

(b) Standards for foreign support enforcement procedures.—

(1) Mandatory elements.—Support procedures of a foreign country which may be the subject of a

declaration pursuant to subsection (a)(1) shall include the following elements:

(A) The foreign country (or political subdivision thereof) has in effect procedures, available to residents of the United States—

(i) for establishment of paternity, and for establishment of orders of support for children and custodial parents; and

(ii) for enforcement of orders to provide support to children and custodial parents, including procedures for collection and appropriate distribution of support payments under such orders.

(B) The procedures described in subparagraph (A), including legal and administrative assistance, are provided to residents of the United States at no cost.

(C) An agency of the foreign country is designated as a Central Authority responsible for—

(i) facilitating support enforcement in cases involving residents of the foreign country and residents of the United States; and

(ii) ensuring compliance with the standards established pursuant to this subsection.

(2) Additional elements.—The Secretary of Health and Human Services and the Secretary of State, in consultation with the States, may establish such additional standards as may be considered necessary to further the purposes of this section.

(c) Designation of United States Central Authority.—It shall be the responsibility of the Secretary of Health and Human Services to facilitate support enforcement in cases involving residents of the United States and residents of foreign countries that are the subject of a declaration under this section, by activities including—

(1) development of uniform forms and procedures for use in such cases;

(2) notification of foreign reciprocating countries of the State of residence of individuals sought for support enforcement purposes, on the basis of information provided by the Federal Parent Locator Service; and

(3) such other oversight, assistance, and coordination activities as the Secretary may find necessary and appropriate.

(d) Effect on other laws.—States may enter into reciprocal arrangements for the establishment and enforcement of support obligations with foreign countries that are not the subject of a declaration pursuant to subsection (a), to the extent consistent with Federal law.

Sec. 660.—Civil action to enforce child support obligations; jurisdiction of district courts

The district courts of the United States shall have jurisdiction, without regard to any amount in controversy, to hear and determine any civil action certified by the Secretary of Health and Human Services under section 652 (a)(8) of this title. A civil action under this section may be brought in any judicial district in which the claim arose, the plaintiff resides, or the defendant resides.

Sec. 661. Regulations pertaining to garnishments

(a) Authority to promulgate

Authority to promulgate regulations for the implementation of the provisions of section 659 of this title, shall insofar as the provisions of such section are applicable to moneys due from (or payable by)

(1) the executive branch of the Government (including in such branch, for the purposes of this sub-

section, the territories and possessions of the United States, the United States Postal Service, the Postal Rate Commission, any wholly owned Federal corporation created by an Act of Congress, and the government of the District of Columbia), be vested in the President (or his designee),

(2) the legislative branch of the Government, be vested jointly in the President pro tempore of the Senate and the Speaker of the House of Representatives (or their designees), and

(3) the judicial branch of the Government, be vested in the Chief Justice of the United States (or his designee).

(b) Requisite content of promulgated regulations

Regulations promulgated pursuant to this section shall—

(1) in the case of those promulgated by the executive branch of the Government, include a requirement that the head of each agency thereof shall cause to be published, in the appendix of the regulations so promulgated, (A) his designation of an agent or agents to accept service of process, identified by title of position, mailing address, and telephone number, and (B) an indication of the data reasonably required in order for the agency promptly to identify the individual with respect to whose moneys the legal process is brought,

(2) in the case of regulations promulgated for the legislative and judicial branches of the Government set forth, in the appendix to the regulations so promulgated, (A) the name, position, address, and telephone number of the agent or agents who have been designated for service of process, and (B) an indication of the data reasonably required in order for such entity promptly to identify the individual with

respect to whose moneys the legal process is brought, and

(3) provide that (A) in the case of regulations promulgated by the executive branch of the Government, each head of a governmental entity (or his designee) shall respond to relevant interrogatories, if authorized by the law of the State in which legal process will issue, prior to formal issuance of such process, upon a showing of the applicant's entitlement to child support or alimony payments, and (B) in the case of regulations promulgated for the legislative and judicial branches of the Government, the person or persons designated as agents for service of process in accordance with paragraph (2) shall respond to relevant interrogatories if authorized by the law of the State in which legal process will issue, prior to formal issuance of legal process, upon a showing of the applicant's entitlement to child support or alimony payments.

(c) Priority of processes

In the event that a governmental entity, which is authorized under this section or regulations issued to carry out this section to accept service of process, pursuant to the provisions of subsection (a) of this section, is served with more than one legal process with respect to the same moneys due or payable to any individual, then such moneys shall be available to satisfy such processes on a first/come, first/served basis, with any such process being satisfied out of such moneys as remain after the satisfaction of all such processes which have been previously served. **[REPEALED]**

Sec. 662 Definitions

For purposes of section 659 of this title—

(a) The term "United States" means the Federal Government of the United States, consisting of the legislative branch, the judicial branch, and the executive branch thereof, and each and every department, agency, or instrumentality of any such branch, including the United States Postal Service, the Postal Rate Commission, any wholly owned Federal corporation created by an Act of Congress, any office, commission, bureau, or other administrative subdivision or creature thereof, and the governments of the territories and possessions of the United States.

(b) The term "child support", when used in reference to the legal obligations of an individual to provide such support, means periodic payments of funds for the support and maintenance of a child or children with respect to which such individual has such an obligation, and (subject to and in accordance with State law) includes but is not limited to, payments to provide for health care, education, recreation, clothing, or to meet other specific needs of such a child or children; such term also includes attorney's fees, interest, and court costs, when and to the extent that the same are expressly made recoverable as such pursuant to a decree, order, or judgment issued in accordance with applicable State law by a court of competent jurisdiction.

(c) The term "alimony", when used in reference to the legal obligations of an individual to provide the same, means periodic payments of funds for the support and maintenance of the spouse (or former spouse) of such individual, and (subject to and in accordance with State law) includes but is not limited to, separate maintenance, alimony pendente lite, maintenance, and spousal support;

such term also includes attorney's fees, interest, and court costs when and to the extent that the same are expressly made recoverable as such pursuant to a decree, order, or judgment issued in accordance with applicable State law by a court of competent jurisdiction. Such term does not include any payment or transfer of property or its value by an individual to his spouse or former spouse in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses.

(d) The term "private person" means a person who does not have sovereign or other special immunity or privilege which causes such person not to be subject to legal process.

(e) The term "legal process" means any writ, order, summons, or other similar process in the nature of garnishment, which

(1) is issued by (A) a court of competent jurisdiction within any State, territory, or possession of the United States, (B) a court of competent jurisdiction in any foreign country with which the United States has entered into an agreement which requires the United States to honor such process, or (C) an authorized official pursuant to an order of such a court of competent jurisdiction or pursuant to State or local law, and

(2) is directed to, and the purpose of which is to compel, a governmental entity, which holds moneys which are otherwise payable to an individual, to make a payment from such moneys to another party in order to satisfy a legal obligation of such individual to provide child support or make alimony payments.

(f) Entitlement of an individual to any money shall be deemed to be "based upon remuneration for employment", if such money consists of—

(1) compensation paid or payable for personal services of such individual, whether such compensation is denominated as wages, salary, commission, bonus, pay, or otherwise, and includes but is not limited to, severance pay, sick pay, and incentive pay, but does not include awards for making suggestions, or

(2) periodic benefits (including a periodic benefit as defined in section 628(h)(3) of this title) or other payments to such individual under the insurance system established by subchapter II of this chapter or any other system or fund established by the United States (as defined in subsection (a) of this section) which provides for the payment of pensions, retirement or retired pay, annuities, dependents' or survivors' benefits, or similar amounts payable on account of personal services performed by himself or any other individual (not including any payment as compensation for death under any Federal program, any payment under any Federal program established to provide "black lung" benefits, any payment by the Secretary of Veterans Affairs as pension, or any payments by the Secretary of Veterans Affairs as compensation for a service/connected disability or death, except any compensation paid by the Secretary of Veterans Affairs to a former member of the Armed Forces who is in receipt of retired or retainer pay if such former member has waived a portion of his retired pay in order to receive such compensation), and does not consist of amounts paid, by way of reimbursement or otherwise, to such individual by his employer to defray expenses incurred by such individual in carrying out duties associated with his employment.

(g) In determining the amount of any moneys due from, or payable by, the United States to any individual, there shall be excluded amounts which—

(1) are owed by such individual to the United States,

(2) are required by law to be, and are, deducted from the remuneration or other payment involved, including but not limited to, Federal employment taxes, and fines and forfeitures ordered by court/martial,

(3) are properly withheld for Federal, State, or local income tax purposes, if the withholding of such amounts is authorized or required by law and if amounts withheld are not greater than would be the case if such individual claimed all dependents to which he was entitled (the withholding of additional amounts pursuant to section 3402(i) of the Internal Revenue Code of 1986 may be permitted only when such individual presents evidence of a tax obligation which supports the additional withholding),

(4) are deducted as health insurance premiums,

(5) are deducted as normal retirement contributions (not including amounts deducted for supplementary coverage), or

(6) are deducted as normal life insurance premiums from salary or other remuneration for employment (not including amounts deducted for supplementary coverage). **[REPEALED]**

Sec. 663. Use of Parent Locator Service in connection with enforcement or determination of child custody in cases of parental kidnaping of child

(a) Agreements with States for use of **Federal** Parent Locator Service

The Secretary shall enter into an agreement with any State which is able and willing to do so, under which the

services of the **Federal** Parent Locator Service established under section 653 of this title shall be made available to such State for the purpose of determining the whereabouts of any *absent* **noncustodial** parent or child when such information is to be used to locate such parent or child for the purpose of—

(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

(2) making or enforcing a child custody determination.

(b) Requests from authorized persons for information

An agreement entered into under subsection (a) of this section shall provide that the State agency described in section 654 of this title will, under procedures prescribed by the Secretary in regulations, receive and transmit to the Secretary requests from authorized persons for information as to (or useful in determining) the whereabouts of any *absent* **noncustodial** parent or child when such information is to be used to locate such parent or child for the purpose of—

(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

(2) making or enforcing a child custody determination.

(c) Information which may be disclosed

Information authorized to be provided by the Secretary under subsection (a), (b), (e), or (f) of this section shall be subject to the same conditions with respect to disclosure as information authorized to be provided under section 653 of this title, and a request for information by the Secretary under this section shall be considered to be a request for information under section 653 of this title which is authorized to be provided under such section.

Only information as to the most recent address and place of employment of any *absent* **noncustodial** parent or child shall be provided under this section.

(d) "Custody determination" and "authorized person" defined

For purposes of this section—

(1) the term "custody determination" means a judgment, decree, or other order of a court providing for the custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modification;

(2) the term "authorized person" means—

(A) any agent or attorney of any State having an agreement under this section, who has the duty or authority under the law of such State to enforce a child custody determination;

(B) any court having jurisdiction to make or enforce such a child custody determination, or any agent of such court; and

(C) any agent or attorney of the United States, or of a State having an agreement under this section, who has the duty or authority to investigate, enforce, or bring a prosecution with respect to the unlawful taking or restraint of a child.

(e) Agreement on use of **Federal** Parent Locator Service with United States Central Authority under Convention on the Civil Aspects of International Child Abduction

The Secretary shall enter into an agreement with the Central Authority designated by the President in accordance with section 11606 of this title, under which the services of the **Federal** Parent Locator Service established under section 653 of this title shall be made available to such Central Authority upon its request for the purpose of locating any parent or child on behalf of an appli-

cant to such Central Authority within the meaning of section 11602(1) of this title. The **Federal** Parent Locator Service shall charge no fees for services requested pursuant to this subsection.

(f) Agreement to assist in locating missing children under **Federal** Parent Locator Service

The Secretary shall enter into an agreement with the Attorney General of the United States, under which the services of the **Federal** Parent Locator Service established under section 653 of this title shall be made available to the Office of Juvenile Justice and Delinquency Prevention upon its request to locate any parent or child on behalf of such Office for the purpose of—

(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child, or

(2) making or enforcing a child custody determination.

The **Federal** Parent Locator Service shall charge no fees for services requested pursuant to this subsection.

Sec. 664. Collection of past-due support from Federal tax refunds

(a) Procedures applicable; distribution

(1) Upon receiving notice from a State agency administering a plan approved under this part that a named individual owes past-due support which has been assigned to such State pursuant to section 602 (a)(26) or section 671(a)(17) of this title, the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such individual (regardless of whether such individual filed a tax return as a married or unmarried individual). If the Secretary of the Treasury finds that any such amount is payable, he shall withhold from such refunds an amount equal to the past-

due support, shall concurrently send notice to such individual that the withholding has been made (including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund), and shall pay such amount to the State agency (together with notice of the individual's home address) for distribution in accordance with *section 657(b)(4) or (d)(3)* **section 657** of this title.

(2)(A) Upon receiving notice from a State agency administering a plan approved under this part that a named individual owes past-due support (as that term is defined for purposes of this paragraph under subsection (c) of this section) which such State has agreed to collect under section 654(6) of this title, and that the State agency has sent notice to such individual in accordance with paragraph (3)(A), the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such individual (regardless of whether such individual filed a tax return as a married or unmarried individual). If the Secretary of the Treasury finds that any such amount is payable, he shall withhold from such refunds an amount equal to such past-due support, and shall concurrently send notice to such individual that the withholding has been made, including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund. The Secretary of the Treasury shall pay the amount withheld to the State agency, and the State shall pay to the Secretary of the Treasury any fee imposed by the Secretary of the Treasury to cover the costs of the withholding and any required notification. The State

agency shall, subject to paragraph (3)(B), distribute such amount to or on behalf of the child to whom the support was owed.

(B) This paragraph shall apply only with respect to refunds payable under section 6402 of the Internal Revenue Code of 1986 after December 31, 1985.

(3)(A) Prior to notifying the Secretary of the Treasury under paragraph (1) or (2) that an individual owes past-due support, the State shall send notice to such individual that a withholding will be made from any refund otherwise payable to such individual. The notice shall also (i) instruct the individual owing the past-due support of the steps which may be taken to contest the State's determination that past-due support is owed or the amount of the past-due support, and (ii) provide information, as may be prescribed by the Secretary of Health and Human Services by regulation in consultation with the Secretary of the Treasury, with respect to procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

(B) If the Secretary of the Treasury determines that an amount should be withheld under paragraph (1) or (2), and that the refund from which it should be withheld is based upon a joint return, the Secretary of the Treasury shall notify the State that the withholding is being made from a refund based upon a joint return, and shall furnish to the State the names and addresses of each taxpayer filing such joint return.

In the case of a withholding under paragraph (2), the State may delay distribution of the amount withheld until the State has been notified by the Secretary of the Treasury that the other person filing the

joint return has received his or her proper share of the refund, but such delay may not exceed six months.

(C) If the other person filing the joint return with the named individual owing the past-due support takes appropriate action to secure his or her proper share of a refund from which a withholding was made under paragraph (1) or (2), the Secretary of the Treasury shall pay such share to such other person. The Secretary of the Treasury shall deduct the amount of such payment from amounts subsequently payable to the State agency to which the amount originally withheld from such refund was paid.

(D) In any case in which an amount was withheld under paragraph (1) or (2) and paid to a State, and the State subsequently determines that the amount certified as past-due support was in excess of the amount actually owed at the time the amount withheld is to be distributed to or on behalf of the child, the State shall pay the excess amount withheld to the named individual thought to have owed the past-due support (or, in the case of amounts withheld on the basis of a joint return, jointly to the parties filing such return).

(b) Regulations; contents, etc.

(1) The Secretary of the Treasury shall issue regulations, approved by the Secretary of Health and Human Services, prescribing the time or times at which States must submit notices of past-due support, the manner in which such notices must be submitted, and the necessary information that must be contained in or accompany the notices. The regulations shall be consistent with the provisions of subsection (a)(3) of this section, shall specify the minimum

amount of past-due support to which the offset procedure established by subsection (a) of this section may be applied, and the fee that a State must pay to reimburse the Secretary of the Treasury for the full cost of applying the offset procedure, and shall provide that the Secretary of the Treasury will advise the Secretary of Health and Human Services, not less frequently than annually, of the States which have furnished notices of past-due support under subsection (a) of this section, the number of cases in each State with respect to which such notices have been furnished, the amount of support sought to be collected under this subsection by each State, and the amount of such collections actually made in the case of each State. Any fee paid to the Secretary of the Treasury pursuant to this subsection may be used to reimburse appropriations which bore all or part of the cost of applying such procedure.

(2) In the case of withholdings made under subsection (a)(2) of this section, the regulations promulgated pursuant to this subsection shall include the following requirements:

(A) The withholding shall apply only in the case where the State determines that the amount of the past-due support which will be owed at the time the withholding is to be made, based upon the pattern of payment of support and other enforcement actions being pursued to collect the past-due support, is equal to or greater than $500. The State may limit the $500 threshold amount to amounts of past-due support accrued since the time that the State first began to enforce the child support order involved under the State plan, and may limit the application of the withholding to past-due support accrued since such time.

(B) The fee which the Secretary of the Treasury may impose to cover the costs of the withholding and notification may not exceed $25 per case submitted.

(c) "Past-due support" defined

(1) Except as provided in paragraph (2), as used in this part the term "past-due support" means the amount of a delinquency, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child, or of a child and the parent with whom the child is living.

(2) For purposes of subsection (a)(2) of this section, the term "past-due support" means only past-due support owed to or on behalf of a qualified child (or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent).

(3) For purposes of paragraph (2), the term "qualified child" means a child—

(A) who is a minor; or

(B)(i) who, while a minor, was determined to be disabled under subchapter II or XVI of this chapter; and

(ii) for whom an order of support is in force.

Sec. 665. Allotments from pay for child and spousal support owed by members of uniformed services on active duty

(a) Mandatory allotment; notice upon failure to make; amount of allotment; adjustment or discontinuance; consultation

(1) In any case in which child support payments or child and spousal support payments are owed by a member of one of the uniformed services (as defined in section 101(3) of title 37) on active duty,

such member shall be required to make allotments from his pay and allowances (under chapter 13 of title 37) as payment of such support, when he has failed to make periodic payments under a support order that meets the criteria specified in section 1673(b)(1)(A) of title 15 and the resulting delinquency in such payments is in a total amount equal to the support payable for two months or longer. Failure to make such payments shall be established by notice from an authorized person (as defined in subsection (b) of this section) to the designated official in the appropriate uniformed service. Such notice (which shall in turn be given to the affected member) shall also specify the person to whom the allotment is to be payable. The amount of the allotment shall be the amount necessary to comply with the order (which, if the order so provides, may include arrearages as well as amounts for current support), except that the amount of the allotment, together with any other amounts withheld for support from the wages of the member, as a percentage of his pay from the uniformed service, shall not exceed the limits prescribed in sections 1673(b) and (c) of title 15. An allotment under this subsection shall be adjusted or discontinued upon notice from the authorized person.

(2) Notwithstanding the preceding provisions of this subsection, no action shall be taken to require an allotment from the pay and allowances of any member of one of the uniformed services under such provisions (A) until such member has had a consultation with a judge advocate of the service involved (as defined in section 801(13) of title 10), or with a law specialist (as defined in section 801(11) of such title) in the case of the Coast Guard, or with a legal officer designated by the Secretary concerned (as defined in section 101(5) of title 37) in any

other case, in person, to discuss the legal and other factors involved with respect to the member's support obligation and his failure to make payments thereon, or (B) until 30 days have elapsed after the notice described in the second sentence of paragraph (1) is given to the affected member in any case where it has not been possible, despite continuing good faith efforts, to arrange such a consultation.

(b) "Authorized person" defined

For purposes of this section the term "authorized person" with respect to any member of the uniformed services means—

(1) any agent or attorney of a State having in effect a plan approved under this part who has the duty or authority under such plan to seek to recover any amounts owed by such member as child or child and spousal support (including, when authorized under the State plan, any official of a political subdivision); and

(2) the court which has authority to issue an order against such member for the support and maintenance of a child, or any agent of such court.

(c) Regulations

The Secretary of Defense, in the case of the Army, Navy, Air Force, and Marine Corps, and the Secretary concerned (as defined in section 101(5) of title 37) in the case of each of the other uniformed services, shall each issue regulations applicable to allotments to be made under this section, designating the officials to whom notice of failure to make support payments, or notice to discontinue or adjust an allotment, should be given, prescribing the form and content of the notice and specifying any other rules necessary for such Secretary to implement this section.

Sec. 666. Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement

(a) Types of procedures required

In order to satisfy section 654(20)(A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:

(1) Procedures described in subsection (b) of this section for the withholding from income of amounts payable as support.

(1)(A) Procedures described in subsection (b) for the withholding from income of amounts payable as support in cases subject to enforcement under the State plan.

(B) Procedures under which the income of a person with a support obligation imposed by a support order issued (or modified) in the State before October 1, 1996, if not otherwise subject to withholding under subsection (b), shall become subject to withholding as provided in subsection (b) if arrearages occur, without the need for a judicial or administrative hearing.

(2) *Procedures under which expedited processes (determined in accordance with regulations of the Secretary) are in effect under the State judicial system or under State administrative processes (A) for obtaining and enforcing support orders, and (B) for establishing paternity.* **Expedited administrative and judicial procedures (including the procedures specified in subsection (c)) for establishing paternity and for establishing, modifying, and enforcing support obligations.** The Secretary may waive the provi-

sions of this paragraph with respect to one or more political subdivisions within the State on the basis of the effectiveness and timeliness of support order issuance and enforcement or paternity establishment within the political subdivision (in accordance with the general rule for exemptions under subsection (d) of this section).

(3) Procedures under which the State child support enforcement agency shall request, and the State shall provide, that for the purpose of enforcing a support order under any State plan approved under this part—

(A) any refund of State income tax which would otherwise be payable to *an absent* **a noncustodial** parent will be reduced, after notice has been sent to that *absent* **noncustodial** parent of the proposed reduction and the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State), by the amount of any overdue support owed by such *absent* **noncustodial** parent;

(B) the amount by which such refund is reduced shall be distributed in accordance with section 657(b)(4) or (d)(3) of this title in the case of overdue support assigned to a State pursuant to section *602(a)(26)* **608(a)(3)** or 671(a)(17) of this title, or, *in the case of overdue support which a State has agreed to collect under section 654(6)* **in any other case** of this title, shall be distributed, after deduction of any fees imposed by the State to cover the costs of collection, to the child or parent to whom such support is owed; and

(C) notice of the *absent* **noncustodial** parent's social security account number (or numbers, if he has more than one such number)

and home address shall be furnished to the State agency requesting the refund offset, and to the State agency enforcing the order.

(4) Procedures under which liens are imposed against real and personal property for amounts of overdue support owed by an absent parent who resides or owns property in the State.

(4) Liens.—Procedures under which—

(A) liens arise by operation of law against real and personal property for amounts of overdue support owed by a noncustodial parent who resides or owns property in the State; and

(B) the State accords full faith and credit to liens described in subparagraph (A) arising in another State, when the State agency, party, or other entity seeking to enforce such a lien complies with the procedural rules relating to recording or serving liens that arise within the State, except that such rules may not require judicial notice or hearing prior to the enforcement of such a lien.

(5)(A)(i) Procedures which permit the establishment of the paternity of any child at any time prior to such child's eighteenth birthday.

(ii) As of August 16, 1984, the requirement of clause (i) shall also apply to any child for whom paternity has not yet been established and any child for whom a paternity action was brought but dismissed because a statute of limitations of less than 18 years was then in effect in the State.

(B) Procedures under which the State is required (except in cases where the individual involved has been found under section 602(a)(26)(B) of this title to have good cause for refusing to cooperate) to require the child and all other parties, in a contested paternity case, to submit to genetic tests upon the request of any such party.

(C) Procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that the rights and responsibilities of acknowledging paternity are explained and ensure that due process safeguards are afforded. Such procedures must include a hospital/based program for the voluntary acknowledgment of paternity during the period immediately before or after the birth of a child.

(D) Procedures under which the voluntary acknowledgment of paternity creates a rebuttable, or at the option of the State, conclusive presumption of paternity, and under which such voluntary acknowledgment is admissible as evidence of paternity.

(E) Procedures under which the voluntary acknowledgment of paternity must be recognized as a basis for seeking a support order without requiring any further proceedings to establish paternity.

(F) Procedures which provide that (i) any objection to genetic testing results must be made in writing within a specified number of days before any hearing at which such results may be introduced into evidence, and (ii) if no objection is made, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy.

(G) Procedures which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability that the alleged father is the father of the child.

(H) Procedures requiring a default order to be entered in a paternity case upon a showing of service of process on the defendant and any additional showing required by State law.

(5) Procedures concerning paternity establishment.—

(A) Establishment process available from birth until age 18.—

(i) Procedures which permit the establishment of the paternity of a child at any time before the child attains 18 years of age.

(ii) As of August 16, 1984, clause (i) shall also apply to a child for whom paternity has not been established or for whom a paternity action was brought but dismissed because a statute of limitations of less than 18 years was then in effect in the State.

(B) Procedures concerning genetic testing.—

(i) Genetic testing required in certain contested cases.—Procedures under which the State is required, in a contested paternity case (unless otherwise barred by State law) to require the child and all other parties (other than individuals found under section 654(29) to have good cause and other exceptions for refusing to cooperate) to submit to genetic tests upon the request

of any such party, if the request is supported by a sworn statement by the party—

(I) alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties; or

(II) denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties.

(ii) Other requirements. — Procedures which require the State agency, in any case in which the agency orders genetic testing—

(I) to pay costs of such tests, subject to recoupment (if the State so elects) from the alleged father if paternity is established; and

(II) to obtain additional testing in any case if an original test result is contested, upon request and advance payment by the contestant.

(C) Voluntary paternity acknowledgment.—

(i) Simple civil process.—Procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that, before a mother and a putative father can sign an acknowledgment of paternity, the mother and the putative father must be given notice, orally and in writing, of the alternatives to, the legal consequences of, and the rights (including, if 1 parent is a minor, any rights afforded due to minority status) and responsibilities that arise from, signing the acknowledgment.

(ii) Hospital-based program.—Such procedures must include a hospital-based program for the voluntary acknowledgment of paternity focusing on the period immediately before or after the birth of a child.

(iii) Paternity establishment services.—

(I) State-offered services. — Such procedures must require the State agency responsible for maintaining birth records to offer voluntary paternity establishment services.

(II) Regulations.—

(aa) Services offered by hospitals and birth record agencies.—The Secretary shall prescribe regulations governing voluntary paternity establishment services offered by hospitals and birth record agencies.

(bb) Services offered by other entities.—The Secretary shall prescribe regulations specifying the types of other entities that may offer voluntary paternity establishment services, and governing the provision of such services which shall include a requirement that such an entity must use the same notice provisions used by, use the same materials used by, provide the personnel providing such services with the same training provided by, and evaluate the provision of such services in the same manner as the provision of such services is evaluated by, voluntary paternity establishment

programs of hospitals and birth record agencies.

(iv) Use of paternity acknowledgment affidavit.—Such procedures must require the State to develop and use an affidavit for the voluntary acknowledgment of paternity which includes the minimum requirements of the affidavit specified by the Secretary under section 652(a)(7) for the voluntary acknowledgment of paternity, and to give full faith and credit to such an affidavit signed in any other State according to its procedures.

(D) Status of signed paternity acknowledgment.—

(i) Inclusion in birth records.—Procedures under which the name of the father shall be included on the record of birth of the child of unmarried parents only if—

(I) the father and mother have signed a voluntary acknowledgment of paternity; or

(II) a court or an administrative agency of competent jurisdiction has issued an adjudication of paternity.

Nothing in this clause shall preclude a State agency from obtaining an admission of paternity from the father for submission in a judicial or administrative proceeding, or prohibit the issuance of an order in a judicial or administrative proceeding which bases a legal finding of paternity on an admission of paternity by the father and any other additional showing required by State law.

(ii) Legal finding of paternity.—Procedures under which a signed voluntary acknowledgment of paternity is considered a legal finding of paternity, subject to the right of any signatory to rescind the acknowledgment within the earlier of—

(I) 60 days; or

(II) the date of an administrative or judicial proceeding relating to the child (including a proceeding to establish a support order) in which the signatory is a party.

(iii) Contest.—Procedures under which, after the 60-day period referred to in clause (ii), a signed voluntary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger, and under which the legal responsibilities (including child support obligations) of any signatory arising from the acknowledgment may not be suspended during the challenge, except for good cause shown.

(E) Bar on acknowledgment ratification proceedings.—Procedures under which judicial or administrative proceedings are not required or permitted to ratify an unchallenged acknowledgment of paternity.

(F) Admissibility of genetic testing results.—Procedures—

(i) requiring the admission into evidence, for purposes of establishing paternity, of the results of any genetic test that is—

(I) of a type generally acknowledged as reliable by accreditation bodies designated by the Secretary; and

(II) performed by a laboratory approved by such an accreditation body;

(ii) requiring an objection to genetic testing results to be made in writing not later than a specified number of days before any hearing at which the results may be introduced into evidence (or, at State option, not later than a specified number of days after receipt of the results); and

(iii) making the test results admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy, unless objection is made.

(G) Presumption of paternity in certain cases.—Procedures which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability that the alleged father is the father of the child.

(H) Default orders.—Procedures requiring a default order to be entered in a paternity case upon a showing of service of process on the defendant and any additional showing required by State law.

(I) No right to jury trial.—Procedures providing that the parties to an action to establish paternity are not entitled to a trial by jury.

(J) Temporary support order based on probable paternity in contested cases.—Procedures which require that a temporary order be issued, upon motion by a party, requiring the provision of child support pending an administrative or

judicial determination of parentage, if there is clear and convincing evidence of paternity (on the basis of genetic tests or other evidence).

(K) Proof of certain support and paternity establishment costs.—Procedures under which bills for pregnancy, childbirth, and genetic testing are admissible as evidence without requiring third-party foundation testimony, and shall constitute prima facie evidence of amounts incurred for such services or for testing on behalf of the child.

(L) Standing of putative fathers.—Procedures ensuring that the putative father has a reasonable opportunity to initiate a paternity action.

(M) Filing of acknowledgments and adjudications in State registry of birth records.—Procedures under which voluntary acknowledgments and adjudications of paternity by judicial or administrative processes are filed with the State registry of birth records for comparison with information in the State case registry.

(6) Procedures which require that *an absent* **a noncustodial** parent give security, post a bond, or give some other guarantee to secure payment of overdue support, after notice has been sent to such *absent* **noncustodial** parent of the proposed action and of the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State).

(7) Procedures which require the State to periodically report to consumer reporting agencies (as defined in section 1681a(f) of title 15) the name of any parent who owes overdue support and is at least 2 months delinquent in the payment of such support and the amount of such delinquency; except that (A) if the amount of the overdue support involved in any case is less than $1,000, information regarding such amount shall be made available only at the option of the State, (B) any information with respect to an absent parent shall be made available under such procedures only after notice has been sent to such absent parent of the proposed action, and such absent parent has been given a reasonable opportunity to contest the accuracy of such information (and after full compliance with all procedural due process requirements of the State), and (C) **such** *information shall not be made available to (i) a consumer reporting agency which the State determines does not have sufficient capacity to systematically and timely make accurate use of such information, or (ii) an entity which has not furnished evidence satisfactory to the State that the entity is a consumer reporting agency.*

(7) Reporting arrearages to credit bureaus.—

(A) In general.—Procedures (subject to safeguards pursuant to subparagraph (B)) requiring the State to report periodically to consumer reporting agencies (as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) the name of any noncustodial parent who is delinquent in the payment of support, and the amount of overdue support owed by such parent.

(B) Safeguards.—Procedures ensuring that, in carrying out subparagraph (A), information with respect to a noncustodial parent is reported—

(i) only after such parent has been afforded all due process required under State law, including notice and a reasonable opportunity to contest the accuracy of such information; and

(ii) only to an entity that has furnished evidence satisfactory to the State that the entity is a consumer reporting agency (as so defined).

(8)(A) Procedures under which all child support orders not described in subparagraph (B) will include provision for withholding from *wages* **income,** in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing application for services under this part.

(B) Procedures under which all child support orders which are initially issued in the State on or after January 1, 1994, and are not being enforced under this part will include the following requirements:

(i) The *wages* **income** of *an absent* **a noncustodial** parent shall be subject to withholding, regardless of whether support payments by such parents are in arrears, on the effective date of the order; except that such *wages* **income** shall not be subject to withholding under this clause in any case where (I) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (II) a written agreement is reached between both parties which provides for an alternative arrangement.

(ii) The requirements of subsection (b)(1) of this section (which shall apply in the case of each *absent* **noncustodial**

parent against whom a support order is or has been issued or modified in the State, without regard to whether the order is being enforced under the State plan).

(iii) The requirements of paragraphs (2), (5), (6), (7), (8), (9), and (10) of subsection (b) of this section, where applicable.

(iv) Withholding from income of amounts payable as support must be carried out in full compliance with all procedural due process requirements of the State.

(9) Procedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (2), is (on and after the date it is due)—

(A) a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced.

(B) entitled as a judgment to full faith and credit in such State and in any other State, and

(C) not subject to retroactive modification by such State or by any other State; except that such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.

(10)(A) Procedures to ensure that, beginning 2 years after October 13, 1988, if the State determines (pursuant to a plan indicating how and when child

support orders in effect in the State are to be periodically reviewed and adjusted) that a child support order being enforced under this part should be reviewed, the State must, at the request of either parent subject to the order, or of a State child support enforcement agency, initiate a review of such order, and adjust such order, as appropriate, in accordance with the guidelines established pursuant to section 667(a) of this title.

(B) Procedures to ensure that, beginning 5 years after October 13, 1988, or such earlier date as the State may select, the State must implement a process for the periodic review and adjustment of child support orders being enforced under this part under which the order is to be reviewed not later than 36 months after the establishment of the order or the most recent review, and adjusted, as appropriate, in accordance with the guidelines established pursuant to section 667(a) of this title, unless

(i) in the case of an order with respect to an individual with respect to whom an assignment under section 602(a)(26) of this title is in effect, the State has determined, in accordance with regulations of the Secretary, that such a review would not be in the best interests of the child and neither parent has requested review; and

(ii) in the case of any other order being enforced under this part, neither parent has requested review.

(C) Procedures to ensure that the State notifies each parent subject to a child support order in effect in the State that is being enforced under this part

(i) of any review of such order, at least 30 days before the commencement of such review; and

(ii) of the right of such parent under subparagraph (B) to request the State to review such order; and

(iii) of a proposed adjustment (or determination that there should be no change) in the child support award amount, and such parent is afforded not less than 30 days after such notification to initiate proceedings to challenge such adjustment (or determination).

(10) Review and adjustment of support orders upon request.—

(A) 3-Year cycle.—

(i) In general.—Procedures under which every 3 years (or such shorter cycle as the State may determine), upon the request of either parent, or, if there is an assignment under part A, upon the request of the State agency under the State plan or of either parent, the State shall with respect to a support order being enforced under this part, taking into account the best interests of the child involved—

(I) review and, if appropriate, adjust the order in accordance with the guidelines established pursuant to section 667(a) if the amount of the child support award under the order differs from the amount that would be awarded in accordance with the guidelines;

(II) apply a cost-of-living adjustment to the order in accordance with a formula developed by the State; or

(III) use automated methods (including automated comparisons with wage or State income tax data) to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the appropriate adjustment to the orders eligible for adjustment under any threshold that may be established by the State.

(ii) Opportunity to request review of adjustment.—If the State elects to conduct the review under subclause (II) or (III) of clause (i), procedures which permit either party to contest the adjustment, within 30 days after the date of the notice of the adjustment, by making a request for review and, if appropriate, adjustment of the order in accordance with the child support guidelines established pursuant to section 667(a).

(iii) No proof of change in circumstances necessary in 3-year cycle review.—Procedures which provide that any adjustment under clause (i) shall be made without a requirement for proof or showing of a change in circumstances.

(B) Proof of substantial change in circumstances necessary in request for review outside 3-year cycle.—Procedures under which, in the case of a request for a review, and if appropriate, an adjustment outside the 3-year cycle (or such shorter cycle as the State may determine) under clause (i), the State shall review and, if the requesting party demonstrates a substantial change in circumstances, adjust the

order in accordance with the guidelines established pursuant to section 667(a).

(C) Notice of right to review.—Procedures which require the State to provide notice not less than once every 3 years to the parents subject to the order informing the parents of their right to request the State to review and, if appropriate, adjust the order pursuant to this paragraph. The notice may be included in the order.

(11) Procedures under which a State must give full faith and credit to a determination of paternity made by any other State, whether established through voluntary acknowledgment or through administrative or judicial processes.

(12) Locator information from interstate networks.—Procedures to ensure that all Federal and State agencies conducting activities under this part have access to any system used by the State to locate an individual for purposes relating to motor vehicles or law enforcement.

(13) Recording of social security numbers in certain family matters.—Procedures requiring that the social security number of—

(A) any applicant for a professional license, commercial driver's license, occupational license, or marriage license be recorded on the application;

(B) any individual who is subject to a divorce decree, support order, or paternity determination or acknowledgment be placed in the records relating to the matter; and

(C) any individual who has died be placed in the records relating to the death and be recorded on the death certificate.

For purposes of subparagraph (A), if a State allows the use of a number other than the social security number, the State shall so advise any applicants.

(14) Administrative enforcement in interstate cases.—Procedures under which—

(A)(i) the State shall respond within 5 business days to a request made by another State to enforce a support order; and

(ii) the term 'business day' means a day on which State offices are open for regular business;

(B) the State may, by electronic or other means, transmit to another State a request for assistance in a case involving the enforcement of a support order, which request—

(i) shall include such information as will enable the State to which the request is transmitted to compare the information about the case to the information in the data bases of the State; and

(ii) shall constitute a certification by the requesting State—

(I) of the amount of support under the order the payment of which is in arrears; and

(II) that the requesting State has complied with all procedural due process requirements applicable to the case;

(C) if the State provides assistance to another State pursuant to this paragraph with respect to a case, neither State shall consider the case to be transferred to the caseload of such other States; and

(D) the State shall maintain records of—

(i) the number of such requests for assistance received by the State;

(ii) the number of cases for which the State collected support in response to such a request; and

(iii) the amount of such collected support.

(15) Procedures to ensure that persons owing past-due support work or have a plan for payment of such support.—

(A) In general.—Procedures under which the State has the authority, in any case in which an individual owes past-due support with respect to a child receiving assistance under a State program funded under part A, to issue an order or to request that a court or an administrative process established pursuant to State law issue an order that requires the individual to—

(i) pay such support in accordance with a plan approved by the court, or, at the option of the State, a plan approved by the State agency administering the State program under this part; or

(ii) if the individual is subject to such a plan and is not incapacitated, participate in such work activities (as defined in section 607(d)) as the court, or, at the option of the State, the State agency administering the State program under this part, deems appropriate.

(B) Past-due support defined.—For purposes of subparagraph (A), the term 'past-due support' means the amount of a delinquency, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child, or of a child and the parent with whom the child is living.

(16) Authority to withhold or suspend licenses.—Procedures under which the State has (and uses in appropriate cases) authority to withhold or suspend, or to restrict the use of driver's licenses, professional and occupational licenses, and recreational licenses of individuals owing overdue support or failing, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings.

(17) Financial institution data matches.—

(A) In general.—Procedures under which the State agency shall enter into agreements with financial institutions doing business in the State—

(i) to develop and operate, in coordination with such financial institutions, a data match system, using automated data exchanges to the maximum extent feasible, in which each such financial institution is required to provide for each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such institution and who owes past-due support, as identified by the State by name and social security number or other taxpayer identification number; and

(ii) in response to a notice of lien or levy, encumber or surrender, as the case may be, assets held by such institution on behalf of any noncustodial parent who is subject to a child support lien pursuant to paragraph (4).

(B) Reasonable fees.—The State agency may pay a reasonable fee to a financial institution

for conducting the data match provided for in subparagraph (A)(i), not to exceed the actual costs incurred by such financial institution.

(C) Liability.—A financial institution shall not be liable under any Federal or State law to any person—

(i) for any disclosure of information to the State agency under subparagraph (A)(i);

(ii) for encumbering or surrendering any assets held by such financial institution in response to a notice of lien or levy issued by the State agency as provided for in subparagraph (A)(ii); or

(iii) for any other action taken in good faith to comply with the requirements of subparagraph (A).

(D) Definitions.—For purposes of this paragraph—

(i) Financial institution.—The term 'financial institution' has the meaning given to such term by section 669A(d)(1).

(ii) Account.—The term 'account' means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account.

(18) Enforcement of orders against paternal or maternal grandparents.—Procedures under which, at the State's option, any child support order enforced under this part with respect to a child of minor parents, if the custodial parent of such child is receiving assistance under the State program under part A, shall be enforceable, jointly and severally, against the parents of the noncustodial parent of such child.

(19) Health care coverage.—Procedures under which all child support orders enforced pursuant to this part shall include a provision for the health care coverage of the child, and in the case in which a noncustodial parent provides such coverage and changes employment, and the new employer provides health care coverage, the State agency shall transfer notice of the provision to the employer, which notice shall operate to enroll the child in the noncustodial parent's health plan, unless the noncustodial parent contests the notice.

Notwithstanding section 654(20)(B) of this title, the procedures which are required under paragraphs (3), (4), (6), *and (7)***(7), and (15)** need not be used or applied in cases where the State determines (using guidelines which are generally available within the State and which take into account the payment record of the *absent* **noncustodial** parent, the availability of other remedies, and other relevant considerations) that such use or application would not carry out the purposes of this part or would be otherwise inappropriate in the circumstances.

(b) Withholding from income of amounts payable as support

The procedures referred to in *subsection (a)(1)* **subsection (a)(1)(A)** of this section (relating to the withholding from income of amounts payable as support) must provide for the following:

(1) In the case of each *absent* **noncustodial** parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of such parent's *wages (as defined by the State for purposes of this section)* **income** must be withheld, in accordance with the succeeding provisions of this subsection, as is necessary to comply with the order and provide for the payment of any fee to the employer which may be

required under paragraph (6)(A), up to the maximum amount permitted under section 1673(b) of title 15. If there are arrearages to be collected, amounts withheld to satisfy such arrearages, when added to the amounts withheld to pay current support and provide for the fee, may not exceed the limit permitted under such section 1673(b), but the State need not withhold up to the maximum amount permitted under such section in order to satisfy arrearages.

(2) Such withholding must be provided without the necessity of any application therefor in the case of a child (whether or not eligible for *aid* **assistance under a State program funded** under part A of this subchapter) with respect to whom services are already being provided under the State plan under this part, and must be provided in accordance with this subsection on the basis of an application for services under the State plan in the case of any other child in whose behalf a support order has been issued or modified in the State. In either case such withholding must occur without the need for any amendment to the support order involved or for any further action (other than those actions required under this part) by the court or other entity which issued such order.

(3)(A) The *wages* **income** of *an absent* **a noncustodial** parent shall be subject to such withholding, regardless of whether support payments by such parents are in arrears, in the case of a support order being enforced under this part that is issued or modified on or after the first day of the 25th month beginning after October 13, 1988, on the effective date of the order; except that such *wages* **income** shall not be subject to such withholding under this subparagraph in any case where (i) one of the parties demonstrates, and the court (or administrative proc-

ess) finds, that there is good cause not to require immediate income withholding, or (ii) a written agreement is reached between both parties which provides for an alternative arrangement.

(B) The *wages* **income** of *an absent* **a noncustodial** parent shall become subject to such withholding, in the case of *wages* **income** not subject to withholding under subparagraph (A), on the date on which the payments which the *absent* **noncustodial** parent has failed to make under a support order are at least equal to the support payable for one month or, if earlier, and without regard to whether there is an arrearage, the earliest of—

(i) the date as of which the *absent* **noncustodial** parent requests that such withholding begin,

(ii) the date as of which the custodial parent requests that such withholding begin, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved, or

(iii) such earlier date as the State may select.

(4)(A) Such withholding must be carried out in full compliance with all procedural due process requirements of the State, and (subject to subparagraph (B)) the State must send advance notice to each absent parent to whom paragraph (1) applies regarding the proposed withholding and the procedures such absent parent should follow if he or she desires to contest such withholding on the grounds that withholding (including the amount to be withheld) is not proper in the case involved because of mistakes of

fact. If the absent parent contests such withholding on those grounds, the State shall determine whether such withholding will actually occur, shall (within no more than 45 days after the provision of such advance notice) inform such parent of whether or not withholding will occur and (if so) of the date on which it is to begin, and shall furnish such parent with the information contained in any notice given to the employer under paragraph (6)(A) with respect to such withholding.

(B) The requirement of advance notice set forth in the first sentence of subparagraph (A) shall not apply in the case of any State which has a system of income withholding for child support purposes in effect on August 16, 1984, if such system provides on that date, and continues to provide, such procedures as may be necessary to meet the procedural due process requirements of State law.

(4)(A) Such withholding must be carried out in full compliance with all procedural due process requirements of the State, and the State must send notice to each noncustodial parent to whom paragraph (1) applies—

(i) that the withholding has commenced; and

(ii) of the procedures to follow if the noncustodial parent desires to contest such withholding on the grounds that the withholding or the amount withheld is improper due to a mistake of fact.

(B) The notice under subparagraph (A) of this paragraph shall include the information provided to the employer under paragraph (6)(A).

(5) Such withholding must be administered by *a public agency designated by the State, and the amounts withheld must be expeditiously distributed by the State or such agency in accordance with section 657 of this title under procedures (specified by the State) adequate to document payments of support and to track and monitor such payments, except that the State may establish or permit the establishment of alternative procedures for the collection and distribution of such amounts (under the supervision of such public agency) otherwise than through such public agency so long as the entity making such collection and distribution is publicly accountable for its actions taken in carrying out such procedures, and so long as such procedures will assure prompt distribution, provide for the keeping of adequate records to document payments of support, and permit the tracking and monitoring of such payments* **the State through the State disbursement unit established pursuant to section 654B, in accordance with the requirements of section 654B.**

(6)(A)(i) The employer of any *absent* **noncustodial** parent to whom paragraph (1) applies, upon being given notice as described in clause (ii), must be required to withhold from such *absent* **noncustodial** parent's *wages* **income** the amount specified by such notice (which may include a fee, established by the State, to be paid to the employer unless waived by such employer) and pay such amount (after deducting and retaining any portion thereof which represents the fee so established) *to the appropriate agency (or other entity authorized to collect the amounts withheld under the alternative procedures described in paragraph (5)) for distribution in accordance with section 657 of this title* **to the State disbursement unit within 7 business days after the date the amount would (but for this subsection) have been paid or credited to the employee, for distribution in accordance with this part. The employer shall withhold funds as directed in the notice, except that when an employer receives an income withholding order issued by another State, the employer shall apply the income withholding law of the state of the obligor's principal place of employment in determining—**

(I) the employer's fee for processing an income withholding order;

(II) the maximum amount permitted to be withheld from the obligor's income;

(III) the time periods within which the employer must implement the income withholding order and forward the child support payment;

(IV) the priorities for withholding and allocating income withheld for multiple child support obligees; and

(V) any withholding terms or conditions not specified in the order.

An employer who complies with an income withholding notice that is regular on its face shall not be subject to civil liability to any individual or agency for conduct in compliance with the notice.

(ii) The notice given to the employer shall **be in a standard format prescribed by the Secretary, and** contain only such information as may be necessary for the employer to comply with the withholding order.

(iii) As used in this subparagraph, the term 'business day' means a day on which State offices are open for regular business.

(B) Methods must be established by the State to simplify the withholding process for

employers to the greatest extent possible, including permitting any employer to combine all withheld amounts into a single payment to each appropriate agency or entity (with the portion thereof which is attributable to each individual employee being separately designated).

(C) The employer must be held liable to the State for any amount which such employer fails to withhold from *wages* **income** due an employee following receipt by such employer of proper notice under subparagraph (A), but such employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph.

(D) Provision must be made for the imposition of a fine against *any employer who discharges from employment, refuses to employ, or takes disciplinary action against any absent parent subject to wage withholding required by this subsection because of the existence of such withholding and the obligations or additional obligations which it imposes upon the employer.* **any employer who—**

(i) discharges from employment, refuses to employ, or takes disciplinary action against any noncustodial parent subject to income withholding required by this subsection because of the existence of such withholding and the obligations or additional obligations which it imposes upon the employer; or

(ii) fails to withhold support from income or to pay such amounts to the State disbursement unit in accordance with this subsection.

(7) Support collection under this subsection must be given priority over any other legal process under State law against the same *wages* **income**.

(8) The State may take such actions as may be necessary to extend its system of withholding under this subsection so that such system will include withholding from forms of income other than wages, in order to assure that child support owed by absent parents in the State will be collected without regard to the types of such absent parents' income or the nature of their income-producing activities.

(8) For purposes of subsection (a) and this subsection, the term 'income' means any periodic form of payment due to an individual, regardless of source, including wages, salaries, commissions, bonuses, worker's compensation, disability, payments pursuant to a pension or retirement program, and interest.

(9) The State must extend its withholding system under this subsection so that such system will include withholding from income derived within such State in cases where the applicable support orders were issued in other States, in order to assure that child support owed by *absent* **noncustodial** parents in such State or any other State will be collected without regard to the residence of the child for whom the support is payable or of such child's custodial parent.

(10) Provision must be made for terminating withholding.

(11) Procedures under which the agency administering the State plan approved under this part may execute a withholding order without advance notice to the obligor, including issuing the withholding order through electronic means.

(c) Administration of support payments through State agency or other entity

Any State may at its option, under its plan approved under section 654 of this title, establish procedures under which support payments under this part will be made through the State agency or other entity which administers the State's income withholding system in any case where either the absent parent or the custodial parent requests it, even though no arrearages in child support payments are involved and no income withholding procedures have been instituted; but in any such case an annual fee for handling and processing such payments, in an amount not exceeding the actual costs incurred by the State in connection therewith or $25, whichever is less, shall be imposed on the requesting parent by the State. **[REPEALED]**

(c) Expedited procedures.—The procedures specified in this subsection are the following:

(1) Administrative action by State agency.—Procedures which give the State agency the authority to take the following actions relating to establishment of paternity or to establishment, modification, or enforcement of support orders, without the necessity of obtaining an order from any other judicial or administrative tribunal, and to recognize and enforce the authority of State agencies of other States to take the following actions:

(A) Genetic testing.—To order genetic testing for the purpose of paternity establishment as provided in section 666(a)(5).

(B) Financial or other information.—To subpoena any financial or other information needed to establish, modify, or enforce a support order, and to impose penalties for failure to respond to such a subpoena.

(C) Response to State agency request.—To require all entities in the State (including for-profit, nonprofit, and governmental employers) to provide promptly, in response to a request by the State agency of that or any other State administering a program under this part, information on the employment, compensation, and benefits of any individual employed by such entity as an employee or contractor, and to sanction failure to respond to any such request.

(D) Access to information contained in certain records.—To obtain access, subject to safeguards on privacy and information security, and subject to the nonliability of entities that afford such access under this subparagraph, to information contained in the following records (including automated access, in the case of records maintained in automated data bases):

(i) Records of other State and local government agencies, including—

(I) vital statistics (including records of marriage, birth, and divorce);

(II) State and local tax and revenue records (including information on residence address, employer, income and assets);

(III) records concerning real and titled personal property;

(IV) records of occupational and professional licenses, and records concerning the ownership and control of corporations, partnerships, and other business entities;

(V) employment security records;

(VI) records of agencies administering public assistance programs;

(VII) records of the motor vehicle department; and

(VIII) corrections records.

(ii) Certain records held by private entities with respect to individuals who owe or are owed support (or against or with respect to whom a support obligation is sought), or consisting of—

(I) the names and addresses of such individuals and the names and addresses of the employers of such individuals, as appearing in customer records of public utilities and cable television companies, pursuant to an administrative subpoena authorized by subparagraph (B); and

(II) information (including information on assets and liabilities) on such individuals held by financial institutions.

(E) Change in payee.—In cases in which support is subject to an assignment in order to comply with a requirement imposed pursuant to part A or section 1912, or to a requirement to pay through the State disbursement unit established pursuant to section 654B, upon providing notice to obligor and obligee, to direct the obligor or other payor to change the payee to the appropriate government entity.

(F) Income withholding.—To order income withholding in accordance with subsections (a)(1)(A) and (b) of section 666.

(G) Securing assets.—In cases in which there is a support arrearage, to secure assets to satisfy the arrearage by—

(i) intercepting or seizing periodic or lump-sum payments from—

(I) a State or local agency, including unemployment compensation, workers' compensation, and other benefits; and

(II) judgments, settlements, and lotteries;

(ii) attaching and seizing assets of the obligor held in financial institutions;

(iii) attaching public and private retirement funds; and

(iv) imposing liens in accordance with subsection (a)(4) and, in appropriate cases, to force sale of property and distribution of proceeds.

(H) Increase monthly payments.—For the purpose of securing overdue support, to increase the amount of monthly support payments to include amounts for arrearages, subject to such conditions or limitations as the State may provide.

Such procedures shall be subject to due process safeguards, including (as appropriate) requirements for notice, opportunity to contest the action, and opportunity for an appeal on the record to an independent administrative or judicial tribunal.

(2) Substantive and procedural rules.—The expedited procedures required under subsection (a)(2) shall include the following rules and authority, applicable with respect to all proceedings to establish paternity or to establish, modify, or enforce support orders:

(A) Locator information; presumptions concerning notice.—Procedures under which—

(i) each party to any paternity or child support proceeding is required (subject to privacy safeguards) to file with the tribunal and the State case registry upon entry of an order, and to update as appropriate, information on location and identity of the party, including social security number, residential and mailing addresses, telephone number, driver's license number, and name, address, and telephone number of employer; and

(ii) in any subsequent child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of such a party, the tribunal may deem State due process requirements for notice and service of process to be met with respect to the party, upon delivery of written notice to the most recent residential or employer address filed with the tribunal pursuant to clause (i).

(B) Statewide jurisdiction.—Procedures under which—

(i) the State agency and any administrative or judicial tribunal with authority to hear child support and paternity cases exerts statewide jurisdiction over the parties; and

(ii) in a State in which orders are issued by courts or administrative tribunals, a case may be transferred between local jurisdictions in the State without need for any additional filing by the petitioner, or service of process upon the respondent, to retain jurisdiction over the parties.

(3) Coordination with ERISA.—Notwithstanding subsection (d) of section 514 of the Employee Retirement Income Security Act of 1974 (relating to effect on other laws), nothing in this subsection shall be construed to alter, amend, modify, invalidate, impair, or supersede subsections (a), (b), and (c) of such section 514 as it applies with respect to any procedure referred to in paragraph (1) and any expedited procedure referred to in paragraph (2), except to the extent that such procedure would be consistent with the requirements of section 206(d)(3) of such Act (relating to qualified domestic relations orders) or the requirements of section 609(a) of such Act (relating to qualified medical child support orders) if the reference in such section 206(d)(3) to a domestic relations order and the reference in such section 609(a) to a medical child support order were a reference to a support order referred to in paragraphs (1) and (2) relating to the same matters, respectively.

(d) Exemption of States

If a State demonstrates to the satisfaction of the Secretary, through the presentation to the Secretary of such data pertaining to caseloads, processing times, administrative costs, and average support collections, and such other data or estimates as the Secretary may specify, that the enactment of any law or the use of any procedure or procedures required by or pursuant to this section will not increase the effectiveness and efficiency of the State child support enforcement program, the Secretary may exempt the State, subject to the Secretary's continuing review and to termination of the exemption should circumstances change, from the requirement to enact the law or use the procedure or procedures involved.

(e) "Overdue support" defined

For purposes of this section, the term "overdue support" means the amount of a delinquency pursuant to an obligation determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a minor child which is owed to or on behalf of such child, or for support and maintenance of the *absent* **noncustodial** parent's spouse (or former spouse) with whom the child is living if and to the extent that spousal support (with respect to such spouse or former spouse) would be included for purposes of *paragraph (4) or (6) of section 654* **section 654(4)** of this title. At the option of the State, overdue support may include amounts which otherwise meet the definition in the first sentence of this subsection but which are owed to or on behalf of a child who is not a minor child. The option to include support owed to children who are not minors shall apply independently to each procedure specified under this section.

(f) Uniform Interstate Family Support Act.—In order to satisfy section 654(20)(A), on and after January 1, 1998, each State must have in effect the Uniform Interstate Family Support Act, as approved by the American Bar Association on February 9, 1993, together with any amendments officially adopted before January 1, 1998 by the National Conference of Commissioners on Uniform State Laws.

(g) Laws voiding fraudulent transfers.—In order to satisfy section 654(20)(A), each State must have in effect—

(1)(A) the Uniform Fraudulent Conveyance Act of 1981;

(B) the Uniform Fraudulent Transfer Act of 1984; or

(C) another law, specifying indicia of fraud which create a prima facie case that a debtor

transferred income or property to avoid payment to a child support creditor, which the Secretary finds affords comparable rights to child support creditors; and

(2) procedures under which, in any case in which the State knows of a transfer by a child support debtor with respect to which such a prima facie case is established, the State must—

(A) seek to void such transfer; or

(B) obtain a settlement in the best interests of the child support creditor.

Sec. 667. State guidelines for child support awards

(a) Establishment of guidelines; method

Each State, as a condition for having its State plan approved under this part, must establish guidelines for child support award amounts within the State. The guidelines may be established by law or by judicial or administrative action, and shall be reviewed at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts.

(b) Availability of guidelines; rebuttable presumption

(1) The guidelines established pursuant to subsection (a) of this section shall be made available to all judges and other officials who have the power to determine child support awards within such State.

(2) There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded. A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular

case, as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case.

(c) Technical assistance to States; State to furnish Secretary with copies

The Secretary shall furnish technical assistance to the States for establishing the guidelines, and each State shall furnish the Secretary with copies of its guidelines.

Sec. 668. Encouragement of States to adopt simple civil process for voluntarily acknowledging paternity and a civil procedure for establishing paternity in contested cases

In the administration of the child support enforcement program under this part, each State is encouraged to establish and implement *a simple civil process for voluntarily acknowledging paternity and* a civil procedure for establishing paternity in contested cases.

Sec. 669. Collection and reporting of child support enforcement data

(a) Statistics on need for and actual provision of services

The Secretary of Health and Human Services shall collect and maintain, on a fiscal year basis, up-to-date statistics, by State, with respect to each of the services specified in subsection (b) of this section (separately stated in the case of each such service for families receiving *aid under plans approved* **assistance under State programs funded** under part A of this subchapter and for families not receiving *such aid* **such assistance**), on—

(1) the number of cases in the child support enforcement agency caseload under this part which need the service involved; and

(2) the number of such cases in which the service has actually been provided.

(b) Types of services

The services referred to in subsection (a) of this section are—

(1) paternity determination;

(2) location of *an absent* **a noncustodial** parent for the purpose of establishing a child support obligation;

(3) establishment of a child support obligation; and

(4) location of *an absent* **a noncustodial** parent for the purpose of enforcing or modifying an established child support obligation.

(c) Actual provision of services

For purposes of subsection (a)(2) of this section, a service has actually been provided when the task described by the service has been accomplished.

Sec. 669A. Nonliability for financial institutions providing financial records to State child support enforcement agencies in child support cases

(a) In general.—Notwithstanding any other provision of Federal or State law, a financial institution shall not be liable under any Federal or State law to any person for disclosing any financial record of an individual to a State child support enforcement agency attempting to establish, modify, or enforce a child support obligation of such individual.

(b) Prohibition of disclosure of financial record obtained by State child support enforcement agency.—A State child support enforcement agency which obtains a financial record of an individual from a financial institution pursuant to subsection (a) may disclose such financial record only for the purpose of, and to the extent necessary in, establishing, modifying, or enforcing a child support obligation of such individual.

(c) Civil damages for unauthorized disclosure.—

(1) Disclosure by State officer or employee.—If any person knowingly, or by reason of negligence, discloses a financial record of an individual in violation of subsection (b), such individual may bring a civil action for damages against such person in a district court of the United States.

(2) No liability for good faith but erroneous interpretation.—No liability shall arise under this subsection with respect to any disclosure which results from a good faith, but erroneous, interpretation of subsection (b).

(3) Damages.—In any action brought under paragraph (1), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of—

(A) the greater of—

(i) $1,000 for each act of unauthorized disclosure of a financial record with respect to which such defendant is found liable; or

(ii) the sum of—

(I) the actual damages sustained by the plaintiff as a result of such unauthorized disclosure; plus

(II) in the case of a willful disclosure or a disclosure which is the result of gross negligence, punitive damages; plus

(B) the costs (including attorney's fees) of the action.

(d) Definitions.—For purposes of this section—

(1) Financial institution.—The term 'financial institution' means—

(A) a depository institution, as defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c));

(B) an institution-affiliated party, as defined in section 3(u) of such Act (12 U.S.C. 1813 (u));

(C) any Federal credit union or State credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752), including an institution-affiliated party of such a credit union, as defined in section 206(r) of such Act (12 U.S.C. 1786(r)); and

(D) any benefit association, insurance company, safe deposit company, money-market mutual fund, or similar entity authorized to do business in the State.

(2) Financial record.—The term 'financial record' has the meaning given such term in section 1101 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401).

Sec. 669B. Grants to States for access and visitation programs

(a) In general.—The Administration for Children and Families shall make grants under this section to enable States to establish and administer programs to support and facilitate noncustodial parents' access to and visitation of their children, by means of activities including mediation (both voluntary and mandatory), counseling, education, development of parenting plans, visitation enforcement (including monitoring, supervision and neutral drop-off and pickup), and development of guidelines for visitation and alternative custody arrangements.

(b) Amount of grant.—The amount of the grant to be made to a State under this section for a fiscal year shall be an amount equal to the lesser of—

(1) 90 percent of State expenditures during the fiscal year for activities described in subsection (a); or

(2) the allotment of the State under subsection (c) for the fiscal year.

(c) Allotments to States.—

(1) In general.—The allotment of a State for a fiscal year is the amount that bears the same ratio to $10,000,000 for grants under this section for the fiscal year as the number of children in the State living with only 1 biological parent bears to the total number of such children in all States.

(2) Minimum allotment.—The Administration for Children and Families shall adjust allotments to States under paragraph (1) as necessary to ensure that no State is allotted less than—

(A) $50,000 for fiscal year 1997 or 1998; or
(B) $100,000 for any succeeding fiscal year.

(d) No supplantation of State expenditures for similar activities.—A State to which a grant is made under this section may not use the grant to supplant expenditures by the State for activities specified in subsection (a), but shall use the grant to supplement such expenditures at a level at least equal to the level of such expenditures for fiscal year 1995.

(e) State administration.—Each State to which a grant is made under this section—

(1) may administer State programs funded with the grant, directly or through grants to or contracts with courts, local public agencies, or nonprofit private entities;

(2) shall not be required to operate such programs on a statewide basis; and

(3) shall monitor, evaluate, and report on such programs in accordance with regulations prescribed by the Secretary.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1997 417722 40196